(27,800)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 448.

MISSOURI PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

CLARENDON BOAT OAR COMPANY, INC.

IN ERROR TO THE COURT OF APPEALS, SECOND CIRCUIT, OF THE STATE OF LOUISIANA.

INDEX.

	Original.	Print.
Caption	1	1
Original petition for writ of error, assignment, prayer, and affidavit	1	1
Original order directing issuance of writ	5	3
Writ of error	6	4
Bond on writ of error	8	5
Certificate of lodgment	9	5
Citation and service	10	6
Order deputizing clerk of court of appeals to serve citation	11	6
Acknowledgment of service and appearance of counsel	12	7
Original return of writ and statement of costs	13	7
Copy of original petition	14	7
Copy of citation and returns showing service	17	10
Copy of exception to the jurisdiction	19	11
Minute entries	21	13
Plea to jurisdiction submitted	21	13
Judgment entered	21	13

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 1, 1921.

	Original.	Print.
Order of submission on brief, &c	22	13
Judgment	23	14
Petition for rehearing filed	23	14
Order denying petition for rehearing	24	14
Clerk's certificate to minutes	24	15
Opinion, McIntosh, J	25	15
Petition for rehearing	27	17
Opinion denying rehearing	30	19
Clerk's certificate	32	20
Application to supreme court of Louisiana for writ of certiorari, &c	33	20
Assignments of error	37	23
Clerk's certificate, supreme court	39	25
Order of supreme court of Louisiana denying application for writs of certiorari, &c	40	25
Certified copy of opinion of court of appeals in St. Louis Southwestern (Cotton Belt) case	42	26

1 Court of Appeals, Second Circuit, State of Louisiana.

No. 887.

MISSOURI PACIFIC RAILROAD COMPANY

vs.

CLARENDON BOAT OAR COMPANY, INC.

A Petition for Writ of Error, Assignment and Prayer.

Considering itself aggrieved by the final decisions of the Court of Appeals for the Second Circuit, State of Louisiana, and the Supreme Court of the State of Louisiana, in rendering judgment against it in the above entitled and numbered cause, the Missouri Pacific Railroad Company, plaintiff therein, hereby prays that a writ of error from the said decision and judgment of the said Court of Appeals to the United States Supreme Court be allowed; that proceedings and papers upon which said decisions and orders were made, duly authenticated, be ordered sent to the Supreme Court of the United States, at Washington, D. C., under rules of the said Court in such cases made and provided; that the same may be inspected and corrected by said Court, as according to law and justice should be done; and that an order be entered fixing the amount of an ordinary bond therefor, and the Missouri Pacific Railroad Company assigns the following errors in the records and proceedings of said case, which errors involve property rights of the Missouri Pacific Railroad Company guaranteed and protected by the fourteenth Amendment to the Constitution of the United States, the protection of which Amendment was specifically sought and plead in the first instance, and which constitutional protection and rights were by the decisions of the Courts of Louisiana, as aforesaid, necessarily denied and abridged, as is shown by the following particular assignments:

The Court of Appeals for the Second Circuit of the State of Louisiana erred in holding and deciding that a court in the State of Louisiana of admittedly otherwise competent jurisdiction had no
2 jurisdiction of a foreign corporation doing business in the State of Louisiana in a suit of a transitory cause of action arising outside of the State of Louisiana, wherein the service was made on an agent designated by the defendant in accordance with the Louisiana statutes relative to the designation by foreign corporations doing business in Louisiana of an agent to receive service of process.

2.

We assign this error to the action of the Supreme Court of the State of Louisiana in refusing to grant a writ of certiorari and review properly and timely sought, seeking a reversal by said Supreme Court

of the decision of the Circuit Court of Appeals, holding that a court in the State of Louisiana of admittedly otherwise jurisdiction had no jurisdiction of a foreign corporation doing business in the State of Louisiana.

3.

The action of the said Circuit Court of Appeals in rendering said decision and the action of the said Supreme Court in refusing to review the said decision was error in that such action denies to the plaintiff equal protection of the laws in violation of the fourteenth amendment to the Constitution of the United States.

4.

The action of the said Circuit Court of Appeals in rendering said decision and the action of the said Supreme Court in refusing to review the said decision was error in that such action deprives the plaintiff of its property, without due process of the law, in violation of the fourteenth amendment to the Constitution of the United States.

The Missouri Pacific Railroad Company shows that the said judgment of the said Court of Appeals of the Second Circuit of the State of Louisiana was entered on the 10th day of March, 1920, which judgment became final and conclusive upon the denial by that court of a re-hearing sought therein, which denial was filed and entered on the 13th day of May, 1920.

3 Plaintiff and appellant shows that subsequent thereto and within the time provided by law, to-wit, on the 10th day of June, 1920, this plaintiff and appellant filed in the Honorable Supreme Court of the State of Louisiana a petition for writ of review of said judgment for said Circuit Court of Appeals, accompanied by printed argument in support thereof, which application was by the Supreme Court of the State of Louisiana denied on the 12th day of June, 1920, and the said application was by said denial dismissed and the remedies of the plaintiff and appellant under the laws of the State of Louisiana were thereby finally exhausted.

Plaintiff and appellant shows that under the rules of the Supreme Court of the State of Louisiana, an application for a re-hearing of an order denying petition for a writ of error was not proper and cognizable, and that, therefore, the said judgment of the said Circuit Court of Appeals for the Second Circuit of the State of Louisiana, has become and is final and conclusive against the rights of this plaintiff and appellant, and deprives him of his protection and rights as guaranteed by the Constitution of the United States, as above set forth.

Upon consideration whereof and for the error assigned plaintiff, Missouri Pacific Railroad Company, prays that the said judgment of the Court of Appeals for the Second Circuit, State of Louisiana, and the Supreme Court of the State of Louisiana be reversed and a judgment rendered in favor of the plaintiff, Missouri Pacific Railroad Company and against the defendant, Clarendon Boat Oar Company,

Inc., for costs and for general and equitable relief, and all orders necessary and proper in the premises.

HUDSON, POTTS, BERNSTEIN & SHOLARS,
Attorneys for Missouri Pacific Railroad Company.

STATE OF LOUISIANA,
Parish of Ouachita:

Before me, the undersigned authority, personally came and appeared Henry Bernstein, who being by me first duly sworn, deposes and says: he is a member of the firm of Hudson, Potts, Bernstein & Sholars, of Monroe, La., attorneys for the plaintiff and
4 appellant in the above cause, and that he is the General Attorney for the said plaintiff and appellant in the State of Louisiana; that all of the executive officers of said Company are absent from the State of Louisiana; that affiant is authorized to make this affidavit; that he has read the foregoing petition and the matters and things therein set out are made upon the information and belief of affiant, and that to the best of his knowledge he attests them to be true and correct.

HENRY BERNSTEIN.

Sworn to and subscribed before me, on this the 2 day of July, A. D. 1920.

[Seal of Allan Sholar, Notary Public, Ouachita Parish, La.]

ALLAN SHOLAR,
Notary Public.

5 Court of Appeals, Second Circuit, State of Louisiana.

No. 887.

MISSOURI PACIFIC RAILROAD COMPANY

vs.

CLARENDON BOAT OAR COMPANY, INC.

Let the writ of error issue herein on the execution of bond by the Missouri Pacific Railroad Company, in favor of the Clarendon Boat Oar Company, Inc. in the sum of Two Hundred ($200.00) Dollars.

Let the Clerk include in the transcript of copy of the opinion of this Court in case No. 869, St. Louis Southwestern Railroad Company vs. Clarendon Boat Oar Company, Inc., decided at the May 1918 term.

CHARLES V. PORTER,
Presiding Judge, Court of Appeals,
Second Circuit, State of Louisiana.

6 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Court of Appeals, Second Circuit, State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Missouri Pacific Railroad Company and the Clarendon Boat Oar Company, Inc., wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said state, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title right, privilege, or exemption specially set up or claimed under such a clause of the said Constitution, treaty, statute or commission; a manifest error hath happened, to the great damage to the said Missouri Pacific Railroad Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that
7 the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the 3rd day of July in the year of our Lord one thousand nine hundred and twenty.

[Seal of the U. S. District Court of the Western Dist. of La.]

M. B. LEE,
Clerk District Court of the United States, Western District of Louisiana.

Allowed July 3rd, 1920.
CHARLES V. PORTER,
Presiding Judge, Court of Appeals, Second Circuit, State of Louisiana.

8 MISSOURI PACIFIC RAILROAD COMPANY, Plaintiff in Error,

vs.

CLARENDON BOAT OAR COMPANY, INC., Defendant in Error.

Know all men by these presents:

That we, the Missouri Pacific Railroad Company, as principal, and the National Surety Company, as surety, are held and firmly bound unto the Clarendon Boat Oar Company, Inc. in the sum of Two Hundred ($200.00) Dollars to be paid to said Clarendon Boat Oar Company, to which payment well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents:

Sealed with our seals and dated this 2 day of July, A. D. 1920.

Whereas, the above named plaintiff in error seeks to prosecute its writ of error in the United States Supreme Court to reverse the judgment rendered in the above entitled action by the Circuit Court of Appeals, Second Circuit, State of Louisiana:

Now, therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute its said writ of error to effect and answer all costs and damages that may be adjudged, if it should fail to make good its plea, then this obligation to be void; otherwise to remain in full force and effect.

MISSOURI PACIFIC RAILROAD COMPANY,
By HENRY BERNSTEIN,
Attorney.
NATIONAL SURETY CO.,
By H. R. SPUD,
Attorney-in-fact.

Bond approved:

Dated July 9th, 1920.

STUBBS, THEUS, GRISHAM & THOMPSON,
Attorneys for Defendant.
CHARLES V. PORTER,
Presiding Judge Court of Appeals, Second Circuit, State of Louisiana.

9 STATE OF LOUISIANA, *ss:*

Court of Appeals, Second Circuit.

I, Pat S. Hamilton, Clerk of said Court, do hereby certify that there was lodged with me, as such Clerk, on July 9th, 1920, in the matter of Missouri Pacific Railroad Company vs. Clarendon Boat Oar Company:

(1) The original bond, of which a copy is herein set forth;

(2) Two copies of the writ of error as herein set forth, one for the defendant and one to file in my office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of my office, and said Court, at my office at Monroe, Louisiana, this 9th day of July, 1920.

[Seal 5th Dist. Clerk & Ex-officio Recorder & Notary Public.]

P. S. HAMILTON,
Clerk Circuit Court of Appeals,
Second Circuit, State of Louisiana.

10 *Citation.*

UNITED STATES OF AMERICA, *ss:*

President of the United States to Clarendon Boat Oar Company, Inc., Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Circuit Court of Appeals for the Second Circuit, State of Louisiana, wherein the Missouri Pacific Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the Missouri Pacific Railroad Company, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the presiding judge of the Circuit Court, Second Circuit, State of Louisiana, this 3rd day of July, A. D. 1920.

[Seal 5th Dist. Clerk & Ex-officio Recorder & Notary Public.]

CHARLES V. PORTER,
Presiding Judge, Circuit Court of Appeals,
Second Circuit, State of Louisiana.

Attest:
PAT S. HAMILTON,
Clerk Court of Appeals, Second
Circuit, State of Louisiana.

11 I hereby duly authorize Pat S. Hamilton, Clerk of the Circuit Court of Appeals, Second Circuit, State of Louisiana, to serve upon the defendant in error the above and foregoing citation.

CHARLES V. PORTER,
Presiding Judge, Court of Appeals,
Second Circuit, State of Louisiana.

12 Monroe, La., July 9th, 1920.

I, Attorney of record for the Clarendon Boat Oar Company, Inc. defendant in error in the above entitled case, hereby acknowledge due service of the above citation and enter an appearance in the Supreme Court of the United States.

STUBBS, THEUS, GRISHAM & THOMPSON,
Attorney- for Clarendon Boat Oar Company, Inc., Defendant in Error.

13 *Return to Writ.*

UNITED STATES OF AMERICA,
State of Louisiana, ss:

Circuit Court of Appeals, Second Circuit.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of said Circuit Court of Appeals for the Second Circuit, State of Louisiana, in the City of Monroe, this 9th day of July A. D. 1920.

[Seal of 5th Dist. Clerk & Ex-officio Recorder & Notary Public.]

PAT S. HAMILTON,
Clerk Circuit Court of Appeals, Second Circuit, State of Louisiana.

Plaintiff's costs $5.00, Paid by Plaintiff.
Defendant's costs $——, Paid by ——.
Cost of Transcript $——, Paid by ——.

PAT S. HAMILTON,
Clerk.

14 To the Honorable Judge of the Eighth Judicial District, Holding Sessions of Court in and for the Parish of Richland, State of Louisiana:

The petition of the Missouri Pacific Railroad Company, with respect represents:

1.

That plaintiff is a railroad corporation organized and existing under the laws of the State of Missouri.

2.

That plaintiff acquired at Master's sale under receivership proceedings had in the United States District Court for the Eastern Division of the Eastern District of Missouri in the matter of the Receivership of the St. Louis, Iron Mountain & Southern Railway Company all the right, title, interest and properties including railroads, traffic and other contracts and choses of action and rights of action of said St. Louis, Iron Mountain & Southern Railroad Company.

3.

That among the choses in action and right of action acquired by plaintiff at said Receiver's Sale aforesaid is the right under a certain contract made and entered into by and between Clarendon Boat Oar Company, Inc., a corporation organized under the laws of the State of New York, but which was at the time of said contract, to-wit, the 12th day of December, 1914, doing business at Clarendon, Arkansas, but which, since that time, has engaged in business in the Parish of Richland, State of Louisiana, being now located at Delhi in said Parish and State, and said St. Louis, Iron Mountain & Southern Railway Company, together with a supplemental contract or renewal of said contract between said parties of date March 3, 1915, both of which said contracts are annexed hereto and made a part hereof for greater certainty.

4.

Petitioner shows that under said contract, said Clarendon Boat Oar Company, Inc., obtained from said Railway Company a special rate on timber or logs into its mill and factory located at Clarendon, Arkansas, on condition that a proportionate amount of manufactured articles manufactured at said plant should be shipped out to the customers of said Boat Oar Company over the lines of the St. Louis, Iron Mountain & Southern Railway Company, and in the event that such percentage was not shipped that the application of greater rates or charges should be made for the deficit which should be paid to said Railway Company.

5.

Petitioner represents that the Clarendon Boat Oar Company, Inc., commenced doing business at Clarendon, Arkansas, on July 22, 1913, having succeeded and acquired all the rights and interest of the plant formerly owned and operated by the Clarendon Boat Oar Company, the two Companies being practically a continuance of one and the same business, acting only under a re-incorporation, and the later Company, the Clarendon Boat Oar Company, Inc., having acquired and succeeded to all the rights and also the obligations of the said Clarendon Boat Oar Company.

6.

Petitioner shows that the said Iron Mountain Company held similar traffic agreement and contracts with the said Boat Oar Company and manufacturing plant under various names under which it operated, beginning with 1908 up to and including 1916.

7.

Petitioner shows that beginning with the operation of the said Clarendon Boat Oar Company, Inc., on July 11, 1913, under renewed contracts made with said Company there was handled by petitioner's successor railroad into the plant of the said Clarendon Boat Oar Company, Inc., rough material of an excess in inbound weight over outbound amounting to 1,530,645 pounds, on which the said Railway Company was entitled to charge and receive local rates which amount to Two Hundred Twenty and 86/100 ($220.86) Dollars in excess of the amount paid on said inbound shipments as the same moved into the mill and which amount is due and owing by said Clarendon Boat Oar Company, Inc., to the said St. Louis, Iron Mountain & Southern Railway Company, and which obligation and
16 the right to collect the same was acquired by your petitioner at receiver's sale aforesaid, all of which will be more especially to appear by itemized statements or inbound and outbound receipts and shipments which will be produced on trial hereof.

8.

Petitioner further shows that since its requisition of the rights and especially said right of action against defendant herein as aforesaid, that it has had the matter up with defendant and the Secretary and Manager of Defendant Company, Mr. George F. Rammelberg, who checked said account and same has been found correct and approved by said Secretary and Manager of Defendant Company.

9.

Petitioner avers that amicable demand has been repeatedly made upon defendant Company for the payment of the amount alleged upon without avail, that it is past due and unpaid and petitioner is entitled to recover the same as the assignee of the said St. Louis, Iron Mountain & Southern Railway Company.

Wherefore, petitioner prays for service hereof and citation according to law on the said Clarendon Boat Oar Company, Inc., and on final trial for judgment in its favor against said Company for the said sum of Two Hundred Twenty and 86/100 ($220.86) Dollars with legal interest thereon from the 1st day of January, 1917, until paid.

Prays for all orders necessary, for costs and general relief.

(Signed) HUDSON, POTTS, BERNSTEIN & SHOLARS,
Attorneys for Petitioner.

STATE OF LOUISIANA,
Parish of Ouachita:

Before me, the undersigned authority, personally came and appeared Henry Bernstein, who after being by me first duly sworn, deposes and says that he is the General Attorney for the Missouri Pacific Railroad Company for the State of Louisiana; that he has read the above petition, and that all the facts and allegations therein contained are true and correct.

(Signed) HENRY BERNSTEIN.

Sworn to and subscribed before me this 14th day of March, A. D. 1918.

(Signed) ALLAN SHOLARS,
Notary Public.

17 State of Louisiana, Parish of Richland, Seventh District Court.

No. 4699.

MISSOURI PACIFIC RAILROAD CO.

versus

CLARENDON BOAT OAR CO., INC.

To Clarendon Boat Oar Co., Inc., Geo. F. Rammelsberg, of the Parish of Richland:

You are hereby summoned either to comply with the demand contained in the petition, of which a certified copy accompanies this citation, or to deliver your answer in writing to said petition, in the office of the Clerk of the Seventh District Court, in and for the Parish of Richland, which office is in the Town of Rayville, said Parish and State, within ten days after the service of this citation, and one additional day for every ten (10) miles you live from Rayville.

Witness, the Honorable Jno. B. McIntosh, Judge of the said Court, this the 17th day of March, A. D. 1918.

(Signed) J. C. SALMON, SR.,
Clerk Seventh District Court.

18 [Endorsed:] No. 4699. Missouri Pacific Railway Co. versus Clarendon Boat Oar Co. Original citation to Clarendon Boat Oar Co. Filed 27th day of March 1918. N. J. McConnell, clerk, D. C.

Received this Citation, together with a certified copy of the Original Petition, in office on the 18th day of March, A. D. 1918, and, on the 22nd day of March, A. D. 1918, I made personal service of Citation and Petition delivering the said certified copies to Geo. F. Rambleburg, Defendant, in person, in the Parish of Richland, La., at Delhi, La., about 16 miles from the Court House.

Sheriff's Fee.

Service of Petition and Citation	$1.00
Mileage, — miles, at 7¢ a mile	....
Total	....

J. E. HIGGINBOTHAM,
Sheriff of Richland Parish.

Received this citation, together with a certified copy of same and a certified copy of original petition, in office on the — day of —— A. D. 191—, and, on the — day of —— A. D. 19—, I made service of petition and citation, by delivering the said certified copies of petition and citation at the usual place of domicile of —— Defendant, situated in the Parish of Richland, La., about — miles from Court House, to —— a person apparently above the age of fourteen years whose name was known to me, living in the domicile of Defendant, who was absent from home at that time.

Sheriff's Fee.

Service of Petition and Citation	$1.00
Mileage, — miles, at 7¢ a mile	....
Total	....

——— ———,
Sheriff of Richland Parish, Louisiana.

19 Seventh District Court, Parish of Richland, State of Louisiana.

No. 4699.

MISSOURI PACIFIC RAILROAD COMPANY

vs.

CLARENDON BOAT OAR COMPANY, INC.

The defendant appears by counsel solely for the purpose of accepting to the jurisdiction of this Court and to citation, and respectfully shows:

1. That it is a foreign corporation and a citizen of the State of New York, and is only doing business in the State of Louisiana as a

foreign corporation for an alleged violation of a contract entere Louisiana, and has appointed an Agent in the State of Louisiana onl in pursuance of the requirements of the statutes of said State o Louisiana, as is more fully shown by the certificate of the Secretar of State annexed to and made a part of the exception in Suit No 4450 on the docket of this Honorable Court entitled St. Louis South western Railway Company vs. Clarendon Boat Oar Company, Inc which certificate is made a part hereof by reference and will be pr duced and filed on the trial of this exception.

2. That this is a suit of one foreign corporation against anothe foreign corporation for an alleged violation of a contract entere into and to be wholly executed in the State of Arkansas.

3. That defendant has not been personally cited and only cite through the Agent named pursuant to the statutes of Louisian and as the cause of action is for the alleged violation of the contra made and to be wholly executed in the State of Arkansas, betwee a citizen of the State of Missouri and a citizen of the State of Ne York, this Honorable Court is without jurisdiction in the premises.

4. That if the statutes of Louisiana, requiring a foreign corpora tion doing business in said State to appoint an Agent on whom servic of legal process can be made in said State, are intended to and d cover the cause of action alleged in plaintiff's petition, and subject your defendant to the jurisdiction of the Louisiana Court
20 for the cause of action sued on, which is especially denied said statutes are contrary to the due process of law and th provisions of Article One of the Fourteenth Amendment of th Constitution of the United States, and are illegal and void, excep that said foreign corporation may be sued in the State of Louisian and cited through the Agent appointed for the service of legal proces in said State on all contracts made in said State or pertaining to th business carried on therein.

Appearer, therefore, prays that these exceptions be sustained and this suit dismissed.

(Signed) STUBBS, THEUS, GRISHAM & THOMPSON,

Attorneys.

I certify that the foregoing exceptions are filed in good faith and not for the purpose of delay.

(Signed) M. C. THOMPSON,

Of Counsel.

21

No. 4699.

MISSOURI PACIFIC RAILROAD COMPANY

VS.

CLARENDON BOAT OAR COMPANY.

Extract of the Minutes of the Seventh Judicial District Court in the Above Styled and Numbered Case, as Taken from the Minute Book of Said Court.

Wednesday, December 11th, 1918.

In this case the "plea to the jurisdiction" was taken up and tried and taken under advisement.

Monday, January 27th, 1919.

In the matter of the exception of the jurisdiction the court sustained the exception as to the jurisdiction. Judgment rendered, read and signed in open Court. "See Decree." On motion of Plaintiff's attorney, an appeal, suspensive and devolutive was granted, made returnable to the Honorable Second Court of Appeals sitting at Monroe, La., according to law. Devolutive appeal bond fixed at the sum of $50.00 and suspensive appeal fixed according to law.

22

Monroe, La., Tuesday, April 22, 1919.

The Honorable Court of Appeal- in and for the Second Circuit of Louisiana was opened pursuant to adjournment. Present: Their honors D. N. Thompson, C. V. Porter, and R. D. Dawkins, Judges, Milton Coverdale, Deputy Sheriff, and A. L. Green, Clerk.

887 Missouri Pacific R. R. Co. vs. Clarenden Boat Oar Co.

Case called for trial and taken up. M. C. Thompson, Esq. of counsel for Defendant, Appellee, announced that counsel for both sides had agreed to submit the case without argument. Case taken under advisement, briefs to be filed.

Monroe, La., August 8, 1919.

Papers were received and filed this day by W. S. Wright, Deputy Clerk as follows:

887 Mo. Pac. Ry. Co. vs. Clarendon Boat Oar Co.

Motion for re-assignment for argument filed by Attorneys for plaintiff & Defendant.

Monroe, La., November 5, 1919.

The Honorable Court of Appeal- in and for the Second Circuit of Louisiana was opened pursuant to adjournment: Present: Their Honors D. N. Thompson, C. V. Porter and R. B. Dawkins, Judges: T. A. Grant, Sheriff, and Geo. W. Lester, Deputy Clerk.

Missouri Pacific Railroad Co., Appellant vs. Clarenden Boat Oar Co.

This case under advisement, brought over from last term. Case argued by Henry Bernstein of Hudson, Potts, Bernstein & Sholars, Attorneys for Plaintiff & Appellant, and brief filed in triplicate. M. C. Thompson, counsel for Deft. submitted case on breifs submitted and taken under advisement.

Court adjourned until ten o'clock to-morrow morning.

23 Monroe, La., Friday, March 12th, 1920.

Opinions and Decrees were this day received and filed by P. S. Hamilton, Dy. Clerk. They having been signed at Chambers as follows: 887, Missouri Pacific Railway Co. vs. Clarenden Boat Oar Company.

Opinion and Decree by Judge Porter, the decree being as follows: "The Judgment appealed from is affirmed."

CHARLES V. PORTER.
R. B. DAWKINS,
D. N. THOMPSON,
Judges Court of Appeal 2nd Circuit, State of Louisiana.

Monroe, La., Friday, March 19th, 1920.

Papers were this day received and filed by Kate Flanagan, Dy. Clerk as follows:

887, Missouri Pacific Railroad Co. vs. Clarendon Boat Oar Co.
Application for re-hearing filed by Hudson, Potts, Bernstein & Sholars, Atty. for Pltff.

Monroe, La., Wednesday, March 24, 1920.

Papers were this day received and filed by Kate Flanagan, Dy. Clerk, as follows:

887, Missouri Pacific Railroad Co. vs. Clarendon Boat Oar Co.
Brief in triplicate in support of application for re-hearing filed by Hudson, Potts, Bernstein & Sholars, Attys. for Plaintiff.

24 Monroe, La., Thursday, May 13, 1920.

The Honorable Court of Appeal in and for the Second Circuit of Louisiana was opened pursuant to adjournment. Present: Their honors D. N. Thompson and R. B. Dawkins, Judges; D. L. Roper, Deputy Sheriff and Pat S. Hamilton, Deputy Clerk.

887, Missouri Pacific R. R. Co. vs. Clarenden Boat Oar Co.
Opinion and Order denying rehearing was handed down by his honor, D. N. Thompson, Judge, the order being as follows: "It is ordered and decreed that the application for rehearing be and the same is hereby denied."

Monroe, Louisiana, Thursday, May 27th, 1920.

Papers were this day received and filed by P. S. Hamilton, Dy. Clerk as follows:

887, Missouri Pacific Railroad Co. vs. Clarendon Boat Oar Co. Notice of Intention to apply to the Honorable Supreme Court of Louisiana for Writs of Certi-ari and review filed by Hudson, Potts, Bernstein & Sholars, Attys. for Plaintiff.

STATE OF LOUISIANA,
Parish of Ouachita:

I, the undersigned Deputy Clerk Court of Appeal in and for the Second Circuit of Louisiana, Ouachita Parish, duly qualified and acting, do hereby certify that the above and foregoing three (3) pages contain and are a true copy of the minutes of the suit No. 887 Missouri Pacific Railroad Co. vs. Clarendon Boat Oar Co., as appears in Minute Book "A" of the Court of Appeal.

In faith whereof, I have hereunto signed my name officially together with the official seal of my office on this the 9th day of July, 1920.

[SEAL.]

LEON H. POOSER,
Dy. Clk. C. of A.

25 STATE OF LOUISIANA:

Court of Appeals, Second Circuit.

No. 887.

No. 887, Monroe Docket.

MISSOURI PACIFIC RAILWAY COMPANY

vs.

CLARENDON BOAT OAR COMPANY.

Appeal from the Parish of Richland, McIntosh Judge.

Submitted November 1919; Decided January 1920, by Judge Porter.

In 1918, Suit No. 869, on the docket of this court, and entitled St. Louis Southwestern Railroad Company vs. Clarendon Boat Oar Company was decided by us. The only difference between the present suit and the one just mentioned is that there is a different plaintiff. It is conceded that the issues in the two cases are identical. In both suits the plaintiff and defendant are foreign corporations, and the cause of action—a contract made in Arkansas to be executed there is the same.

In the first suit an exception to the jurisdiction rationæ personam was sustained by the district court and that ruling was affirmed by us in an opinion handed down in May, 1918.

After an application for a rehearing had been denied by this court the plaintiff applied to the Supreme Court for a writ of review and the latter tribunal declined to issue the writ and dismissed the application. The present plaintiff is the assignee under a sale in a receivership proceeding in the United States District Couet for the Eastern Division of the Eastern District of Missouri, of the rights, properties choses in action, etc. of the plaintiff in the former suit, and as such, has instituted this suit on the same cause of action as was set out in its former suit. It was met by the same exception to the jurisdiction, which, as in the former suit, was sustained by the trial court, and from that ruling it again appeals to this court.

Opinion.

The present proceeding is really a very unusual one. Aft-*er* the Supreme Court of this State declined to review our first decision, counsel for plaintiff did not see fit to apply to the Supreme Court of the United States for a writ of error, which, the question involved being a Federal one, they had a right to do, but they appear to have acquiesced in the decision of the Supreme Court, at least for
26 a time, and to have renewed their demand in behalf of the successor of the former plaintiff.

And the reasons assigned are about as extraordinary as the proceeding itself. They say that in our former decision this court (and inferentially the Supreme Court) committed an error in construing the language of the Supreme Court of the United States in the case of Simon vs. Southern Railway Company, 236 U. S. 131, upon which case our decision chiefly rested.

They say further that a later decision by the Supreme Court of the United States—Penna. Fire Insurance Company vs. Gold Issue Minn. Co., 243 U. S. 93—squarely supports their contentions in the former case. They say that the above case was evidently not brought to the attention of this court in the former suit, and this is true, because the authority chiefly relied upon by them, as we recall the facts, was that of Watkins vs. North American L. and T. Co. 106 La. 621, and the insurance case just referred to was not cited.

Counsel's contention now is, as we understand it, that the Federal Courts will accept the interpretation of State statutes prescribing the methods whereby foreign corporations may be brought in to state courts by the Supreme Courts of such states, and this is undoubtedly true.

And they further contend that, as the Supreme Court, in the Watkins case, cited supra, held in line with their views, our opinion was erroneous. They refer with confidence, to a Missouri statute cited at length by the Supreme Court of the United States, in the Fire Insurance case, which sustained the jurisdiction of the state court, and compare the provisions of that statute with those of this state on the same subject. In our former opinion we said that the

ruling of the Supreme Court in the Watkins case was based upon the fact that the cause of action arose in this state, despite some expressions by the learned organ of the court (the present chief justice) indicating that the opinion might be based upon broader grounds.

A careful re-examination of the opinion confirms us in the view we then expressed. After commenting upon several cases,
27 and particularly that of Pope Mfg. Co. 87 N. Y., 137, which held that under the code of Civil Procedure of that state, a citizen of that state might sue a foreign corporation upon any cause of action, no matter where originating, and no matter whether the corporation has engaged in business or has appointed an agent to receive service of process in the state or not, the court said:

"It is not necessary, nor would we be disposed to adopt the extreme view last above referred to—On the contrary, we might hold that the jurisdiction acquired by service of process on respondent's agent in this state is confined to cases in which the cause of action arises here, and, nevertheless, maintain the jurisdiction so acquired in the instant case.

For, whilst relator's right, if he has any, to inspect respondent's books may spring from the contract made in England, the cause of action disclosed in his petition consists of the refusal of respondent's agent here to permit him to exercise this right." In view then of the fact that the Supreme Court of this state has never decided that under the statutes of this State our courts are required to burden themselves with litigation between foreign corporations, one of Missouri and the other of Arkansas, on a contract made in the latter state to be executed there, this Court is at liberty to express the opinion that our statutes on the subject relate exclusively to causes of action arising or business done in this state.

And this without reference to the decision of the Supreme Court of the United States in the Simon case, and which in the clauses quoted in our former opinion, is squarely in point, and not, as we think, impaired by any later opinion by the same tribunal.

But, even if we were less sure of our ground than we are, we should, in the circumstances, pass the question on to the Supreme Court as the proper tribunal to reverse a decision which we have rendered, and which it has, inferentially at least, affirmed.

We do not deem it necessary to discuss the suggestion made in the brief of the defendant to the effect that the several statutes relied upon by plaintiffs have been repealed.

28 In the event of an application by plaintiff for a writ of review, the clerk of this court is instructed to annex to this opinion a certified copy of our opinion in case No. 869 on the Monroe docket.

The judgment appealed from is affirmed.

CHARLES V. PORTER,
R. B. DAWKINS,
D. N. THOMPSON,
Judges Court of Appeal, 2nd Circuit,
State of Louisiana.

Endorsed: No. 887, Missouri Pacific Railway Company vs. Clarendon Boat Oar Company. Opinion and Decree, Filed March 10, 1920. P. S. Hamilton, Dy. Clerk C. of A.

A True Copy of Original.
[SEAL.]

PAT S. HAMILTON,
Clerk Court of Appeal.

29

No. 887.

Court of Appeals, Second Circuit of Louisiana.

MISSOURI PACIFIC RAILROAD COMPANY

VS.

CLARENDON BOAT OAR COMPANY.

On Appeal from the Parish of Richland, John R. McIntosh, Judge.

Now comes the Missouri Pacific Railroad Company, Plaintiff in the above entitled and numbered cause, and with respect represents to the Court that the judgment and decree entered in this cause on the 10th day of March, 1920, is contrary to the law and the evidence presented by the record herein, and because of which fact appearer respectfully shows that a re-hearing herein should be granted.

Wherefore, the premises considered, your appearer prays that an order be entered directing a re-hearing in this cause.

HUDSON, POTTS, BERNSTEIN & SHOLARS,
Attorneys.

STATE OF LOUISIANA,
Parish of Ouachita:

Before me, the undersigned authority, personally came and appeared F. G. Hudson, who, after being by me first duly sworn, deposes and says: that he is Assistant General Attorney for the Missouri Pacific Railroad Company for the State of Louisiana, that he has read the above motion, and that all the matters and things therein contained are true and correct.

F. G. HUDSON, JR.

Sworn to and subscribed before me this 19th day of March, A. D. 1920.

JNO. J. POTTS,
Notary Public.

30 No. 887, Monroe Docket.

Appeals from the Parish of Richland—McIntosh, Judge—on Application for Rehearing.

By the COURT:

The legal question involved in this case is the same which this court passed upon sometime last year in the case of St. Louis Southwestern Railroad Company vs. Clarendon Boat Oar Company, and in which an application to review our judgment was denied by the Supreme Court. In our opinion handed down in the present case we adhered to the views expressed in the former case as to the want of jurisdiction in the Court of Richland Parish over the subject matter involved and we still see no reason to change the conclusion reached.

In the opinion handed down in the present case, the writer of the opinion inadvertently stated that, "the present plaintiff is the assignee under a sale in Receivership proceedings in the United States District Court for the Eastern Division of the Eastern District of Missouri, of the rights, properties, choses in action, etc., of the plaintiff in the former suit and as such has instituted this suit on the same cause of action as was set out in its former suit."

The writer further stated, "the present proceeding is really a very unusual one. After the Supreme Court of this state declined to review our first decision, counsel for plaintiff, did not see fit to apply to the Supreme Court of the United States for a writ of error, which the question involved being a Federal one, they had a right to do, but they appear to have acquiesced in the decision of the Supreme Court, at least for a time and to have renewed their demand in behalf of the successor of the former plaintiff."

An examination of the records in the two cases discloses that the writer of the opinion was slightly in error in his statement of the facts. The error only consists however in stating that the present plaintiff was assignee of the plaintiff in the former suit, and that the counsel in the present suit was the same who appeared for the plaintiff in the former suit. The present plaintiff is the assignee of the contract sued on under a Receivership sale of the assets of St. Louis,
Iron Mountain & Southern Railway Co., and not of the St.
31 Louis & Southwestern Railway Company. Messrs Alexander & Wilkinson of Shreveport and Mr. George Wesley Smith of Rayville were the counsel of the plaintiff in the former suit, while Messrs. Hudson, Potts, Bernstein & Sholars brought the present suit. That firm was not connected with the former suit in any manner.

The confusion of the two cases in the mind of the writer of the opinion was not by any means inexcusable but was a perfectly natural consequence. The cause of action in the two cases was the same. In both cases the plaintiff acquired its claim and right of action at a Receivership sale of the assets of a railroad company and both suits were instituted against the same defendant in the same

court of original jurisdiction and the defendant filed the same plea to the jurisdiction founded on the same state of facts in each case.

The matter complained of is of little importance, certainly not sufficient on which to grant a rehearing. But the correction of the erroneous statement is due the able counsel representing the plaintiff in the present case and with this correction.

It is ordered and decreed that the application for a rehearing be and the same is hereby denied.

JUDGES COURT OF APPEALS, SECOND CIRCUIT,
STATE OF LOUISIANA.

Endorsed: 887 Mo. Pac. R. R. Co. vs. Clarendon Boat Oar Co., Order denying rehearing. Filed May 13, 1920, P. S. Hamilton, Dy. Clerk C. of A.

A true copy of the original:

[Seal Dist. Clerk & Ex-Officio Recorder & Notary Public.]

PAT. S. HAMILTON,
Clerk Court of Appeals.

32 Circuit Court of Appeals, Second Circuit.

STATE OF LOUISIANA, *ss:*

I, Pat. S. Hamilton, Clerk of said Court, do hereby certify that the foregoing pages, numbered 1 to — inclusive, are a full and true and complete transcript of the record and proceedings in the case of Missouri Pacific Railroad Company, plaintiff, vs. Clarendon Boat Oar Company, defendant, and also of the opinions of the said court rendered therein, as the same now appear on file in my office.

In Testimony Whereof, I have hereunto signed my name and affixed the seal of said Court in my office, at Monroe, Louisiana, on this, the 9th day of July, A. D. 1920.

[Seal Dist. Clerk & Ex-Officio Recorder & Notary Public.]

PAT. S. HAMILTON,
Clerk Circuit Court of Appeals, Second Circuit, State of Louisiana.

33 To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the State of Louisiana:

The petition and application of the Missouri Pacific Railroad Company which is asking here, by means of this application, that writs of certiorari and review be directed to the Honorable Court of Appeals for the Second Circuit of the State of Louisiana, in and for the Parish of Richland, bringing to this Court, for the correction of errors therein contained, a certain judgment and decree handed down by that Court on the tenth day of March, A. D. 1920, which judgment became final and conclusive upon the denial of a rehearing

sought therein, which denial was filed and entered on May 13, 1920.

A copy of the original petition, exception to the jurisdiction, being all the pleadings in said cause to which this application relates, a copy of the citation and return, a copy of the reasons assigned by the Court of Appeals for its judgments, original and on rehearing and a copy of the application for a rehearing are attached hereto as required by the rule. There is also attached, as directed by the Court of Appeals in its original opinion, a copy of the decree of that Court in a former and similar suit, entitled "St. Louis, Southwestern Railway Company vs. Clarendon Boat Oar Company," #869 on the docket of that Court.

Due notice to the Court, the defendant and its Counsel has been made, as required, and is shown by the affidavit verifying this application.

The facts and circumstances creating the issue herein presented are as follows, to-wit:

1.

On February 17, 1918, the Missouri Pacific Railroad Company, a Missouri corporation, operating a line of railroad in the State of Louisiana, filed its petition in the District Court of the Sixth
34 District in and for Richland Parish, Louisiana against the Clarendon Boat Oar Company, Inc., a corporation organized under the laws of the State of New York, and, at the time the suit was filed, engaged in business in the Parish of Richland, State of Louisiana, wherein it was sought to recover the amount of two hundred twenty and 86/100 dollars, alleged to be due to the plaintiff by the defendant on a contract as therein set forth.

2.

The contract in question was executed on the twelfth day of December, 1914, at which time the Clarendon Boat Oar Company, Inc., defendant, was doing business at Clarendon in the State of Arkansas. Under the contract the Clarendon Boat Oar Company, Inc., obtained from the Railroad Company a special rate on timber or logs into its mill and factory located at Clarendon, Arkansas, upon condition that a proportionate amount of the manufactured articles, manufactured at the said plant out of the said logs and rough material, should be shipped out to the customers of the said Boat Oar Company over the lines of the said Railroad Company.

The said contract provided that in the event such stated percentage of the manufactured product was not shipped over the lines of the plaintiff railroad company then in that event a greater rate or charge should be made for the deficit, which, by the said contract, the said Boat Oar Company agreed to pay to the said Railroad Company.

3.

Annexed to the petition was a copy of the contract in question and its supplements and renewals, and in the petition there is set forth

the detail whereby an excess of inbound freight over outbound tonnage, amounting to 1,530,645 pounds, was created, on which excess the Railroad Company, under the terms of the traffic agreement and contract, was entitled to charge rates which amounted to the
35 indebtedness of two hundred twenty and 86/100 dollars, which it was alleged the defendant Company owed to the plaintiff and for which judgment was prayed.

4.

Service of the said cause was had upon George F. Rammelberg, Secretary and Manager of the defendant Company, who was the agent for service designated by the defendant Company under the Louisiana statutes.

5.

The defendant appeared on March 28, 1918, and excepted to the jurisdiction of the Court on the ground that this cause being a suit of one foreign corporation against another foreign corporation, for the alleged violation of a contract entered into in a foreign state, that the Court was without jurisdiction rationæ personam and that the service of citation on the agent designated under the Louisiana statute was not authorized by the said statute in such a cause of action, which said statute authorized the citation and service only on causes of action arising in or pertaining to the business carried on by the said foreign corporation in the State of Louisiana.

6.

On January 27, 1919, Honorable John R. McIntosh, District Judge, sustained the exception to the jurisdiction and dismissed the case at the cost of the plaintiff. In due course appeal was regularly and properly taken to the Circuit Court of Appeals of the Second Circuit, duly perfected and in due course heard, and on March 10, 1920, a judgment was rendered by the said Circuit Court of Appeals wherein it was held that in the present status of the jurisprudence of the State of Louisiana on the question at issue it was the duty of the Circuit Court of Appeals to affirm the decision of the lower court, sustaining the exception to the jurisdiction and to pass on the Supreme Court the question for final determination. A copy of this opinion is attached to and made a part of this application.

7.

36 The jurisprudence which the Circuit Court of Appeals had in mind was brought about by the following situation:

In May, 1918, the Circuit Court of Appeals for the Second Circuit, in a case brought by the St. Louis, Southwestern Railroad Company against the same defendant, upon an altogether similar cause of action, held on the authority of the case of Simon vs. the Southern Railway Company, reported in the 236 U S. page 131, that the

Louisiana Court had no jurisdiction over a foreign corporation, doing business in this state, in a suit on a transitory cause of action, arising outside of this state, wherein the service was made on an agent designated by the defendant to receive service of process under the Louisiana statute. A petition for a writ of certiorari and review in that case was refused by the Supreme Court of Louisiana. Therefore, the Circuit Court of Appeals in this case felt, that, by refusing the writ in the former case, the Supreme Court had affirmed its ruling and that, therefore, the question was stare decisis.

8.

In the opinion of the Circuit Court of Appeals of March 10, 1920, there were certain errors made by that Court in confusing the former case, which was brought by the St. Louis, Southwestern Railroad Company, commonly referred to as the "Cotton Belt Railroad," with this case, which was brought by the Missouri Pacific Railroad Company, an altogether different railroad system. That confusion the Court corrected in its opinion on rehearing, copy of which is also attached hereto and made a part of this petition for review.

But, notwithstanding said errors, the rehearing was denied. The Court, in its former opinion, anticipated that the matter would be considered by your Honors on review; for in that opinion the Court instructed the Clerk of the Court to annex to the petition for review a copy of their opinion in the former case (the Cotton Belt case), which opinion we assume the Clerk will annex hereto.

37 The amount involved in this litigation is small, but the principle is exceedingly large and important. We very earnestly and very sincerely believe and aver that the Circuit Court of Appeals of the Second Circuit has confused not only the federal jurisprudence but a former decision of this Court on this subject, to wit, Watkins vs. the North American L. & T. Company, 106 Louisiana, page 621.

Assignments of Error.

The question involved in this litigation may be fairly stated as follows:

Has an otherwise competent court of the State of Louisiana jurisdiction of a foreign corporation doing business in this State in a suit on a transitory cause of action arising outside of this State, wherein the service is made on an agent designated by the defendant under the Louisiana statutes to receive service of process?

1. We assign as error the action of the Circuit Court of Appeals in resolving that issue in the negative.

2. We assign as error the action of the Circuit Court of Appeals in declining jurisdiction of the State Courts of this cause, in that the same denies to plaintiff the equal protection of the laws and a due process of Law, in violation of the Fourteenth Amendment to the Constitution of the United States.

(Argument omitted.)

In view of the above authorities—especially the Gold Issue Mining Company, there can, in our view of the law, be no doubt of the state court jurisdiction.

Wherefore, and for the reasons assigned, it is respectfully prayed that your Honors may grant writs of certiorari and review directed to the Honorable Court of Appeals for the Second Circuit of the State of Louisiana and to the several Judges thereof, directing and commanding that they send, or cause to be sent to your Honorable Court, for review, the entire record in the cause entitled, "Missouri Pacific Railroad Company, Plaintiff and Appellant, vs. Clarendon Boat Oar Company, Defendant and Appellee, No. 887 on
38 the docket of the Court of Appeals for the Second Circuit of the State of Louisiana, on appeal from the Seventh District Court, Richland Parish, Louisiana," whereof Honorable John R. McIntosh was Judge and wherein the number of said cause was #4699. And, upon the said record being lodged in this Honorable Court, that the same may be assigned for hearing, and, upon submission, that the action of the courts below in affirming and upholding and maintaining the exception to the jurisdiction of the said courts may be reversed, annulled and set aside, and the said jurisdiction maintained and the said cause remanded for trial and hearing in accordance with the petition filed therein.

Applicant prays for all costs and for all and such other relief as may be necessary and proper in the premises.

(Signed) HUDSON, POTTS, BERNSTEIN & SHOLARS,
Attorneys for Plaintiff and Applicant.

(Sg.) HENRY BERNSTEIN,
Of Counsel.

STATE OF LOUISIANA,
Parish of Ouachita:

Before me, the undersigned authority, personally came and appeared Henry Bernstein, who, after being by me first duly sworn, deposes and says: That he is General Attorney for the Missouri Pacific Railroad Company for the State of Louisiana. That the Executive Officers of said Company are absent from the State of Louisiana. That application for rehearing has been filed and overruled, and notice to the Court and parties has been filed in the Clerk's office as required. That he has read the above petition, and that all the matters and things therein contained are true and correct.

(Sg.) HENRY BERNSTEIN.

Sworn to and subscribed before me this 28th day of May, A. D. 1920.

[SEAL.] (Sg.) JNO. J. POTTS,
Notary Public.

39 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I hereby certify the foregoing to be a true extract from the application for certiorari or writ of review, filed in this the Supreme Court of the State of Louisiana, on June 10th, 1920, in the cause entitled Missouri Pacific Railroad Company vs. Clarendon Boat Oar Company. In re Missouri Pacific Railroad Company applying for certiorari or writ of review, to the court of appeal, parish of Richland, State of Louisiana, No. 24,121 of the docket of the Supreme Court of the State of Louisiana.

In testimony whereof I hereunto sign my name and affix the seal of this Court, at the city of New Orleans, this the 6th day of July, A. D. 1920, and of the one hundred and forty-fifth year of the Independence of the United States of America.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

40 UNITED STATES OF AMERICA,
State of Louisana:

Supreme Court of the State of Louisiana.

New Orleans, Saturday, June 12, 1920.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors: Frank A. Monroe, Chief Justice. Olivier O. Provosty, Walter B. Sommerville, Chas. A. O'Niell, Ben C. Dawkins, Associate Justices.

His Honor, The Chief Justice pronounced the opinion and judgment of the court in the following case:

41 Saturday, June 12th, 1920.

Mr. Chief Justice Monroe.

No. 24,121.

MISSOURI PACIFIC RAILROAD CO.
VS.
CLARENDON BOAT OAR COMPANY.

In re Missouri Pacific Railroad Co., Applying for Certiorari or Wr
of Review to the Court of Appeal, Parish of Richland, State
Louisiana.

(Endorsement on Back — Application.)

Denied.
(Signed) F. A. M.
O. O. P.
W. B. S.

His Honor, Mr. Justice O'Niell, J., dissents.
" " " " Dawkins, J. dissents.

Clerk's office, New Orleans, La., July 6th, 1920.

A true copy from minutes.

[Seal of the Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

42 STATE OF LOUISIANA:

Court of Appeals, Second Circuit.

No. 869.

ST. LOUIS SOUTHWESTERN R. R. CO.
VS.
CLARENDON BOAT OAR COMPANY, INC.

Appeal from the Parish of Richland.

McIntosh, Judge.

Submitted at Monroe April, 1918.

Decided May, 1918.

By PORTER, *Judge* :

The plaintiff company, a Missouri corporation sues the defendan
company, a New York corporation, on a contract entered into in th

State of Arkansas and to be executed there, for $646.91, with legal interest thereon from January first, 1916.

It is alleged that by said contract the defendant bound itself in consideration of the rates of freight named in the contract, to ship its entire forest products from Clarendon Arkansas over plaintiff's line of railroad, or else to pay plaintiff company its local rates on said products until the finished products were reshipped over its said line.

It is alleged that defendant did not comply with its contract to ship over plaintiff's line its finished product and therefore became liable to plaintiff for the difference between the rate charged and the local rate on said rough products which amounted to the sum above named.

The defendant excepted to the jurisdiction of the court and the exception having been sustained the plaintiff prosecutes this appeal.

Opinion.

The defendant was brought into court—or an attempt was made to that end—by service upon the person which it had in compliance with the laws of the state, named as the person upon whom process was to be served in case of suit against it, and the sole question presented is as to the effect of the laws of this state which prescribe the conditions upon which foreign corporations are permitted
43 to do business here.

The defendant contends that when a foreign corporation qualifies by complying with the law with reference to the designation of a person upon whom process is to be served, it submits itself to the jurisdiction of our courts in so far only as regards causes of action growing out of or incidental to the transaction of its business in the state, but that it does not submit itself to he jurisdiction of our courts as to causes of action arising in other states in no way connected with the conduct of its business here.

Counsel for plaintiff on the other hand contend when such a corporation complies with the law, as above stated and establishes an office here and designates an agent here, upon whom service may be made, it becomes subject to the jurisdiction of the courts here irrespective of the citizenship of the plaintiff or the place where the cause of action arose or the subject matter of the controversy. In other words, that it occupies the same position as does a domestic corporation.

The able counsel for both parties refer to quite an array of authorities in support of their respective contentions, but their chief reliance is upon two leading cases, to-wit:

Watkins vs. North American L. & T. Co. 106 La. 621, cited by Plaintiff and Simon vs. Southern R. R. Co. 236 U. S. 131.

Cited by Defendant.

The plaintiff, or rather the relator (it was a mandamus proceeding in the case cited by Plaintiff here) was a member of a corporation formed in England, and doing business here by virtue of the law

referred to. He demanded the right to inspect the books of the Company at its office in Lake Charles and being denied that right, *be* instituted mandamus proceedings.

The decision is quit lengthy and discusses the question of the effect and scope of our laws which prescribe the conditions upon which foreign corporations may do business in this state, from
44 several standpoints, and there are some expressions in the opinion which indicate that the court intended to decide the question in accordance with the views of plaintiff's counsel here.

But as a matter of fact, what the court did decide was that although defendant was a foreign corporation and although relator's right of action sprang from a contract made in England (the charter of the company) his cause of action arose here when the officers of the company refused to permit him to examine the books, and the mandamus was granted.

The Simon case was a suit by a citizen of Louisiana, against the defendant railroad company, a Virginia Corporation, for personal injuries alleged to have been sustained while plaintiff was a passenger on defendant's train in a collision between Mobile, Alabama, and Meridian, Mississippi.

The railroad ompany was cited through its designated agent, just as the English corporation was cited in the Watkins case, and as in that case, the defendant pleaded to the jurisdiction of the court. The case found its way at last to the Supreme Court of the United States and that tribunal sustained the plea and dismissed plaintiff's suit.

It is clear that the question which was presented there was identical with the one under discussion here and the court squarely decided the question as follows:

"We therefore purposely refrain from passing upon either of the propositions decided in the courts below, and without discussing the right to sue on a transitory cause of action and serve the same on an agent voluntarily appointed by the foreign corporation, we put the decision here on the special fact, relied on in the court below, that in this case the cause of action arose within the state of Alabama and the suit therefor, in the Louisiana court, was served on an agent designated by a Louisiana statute."

"But this power to designate by statute, the officer upon whom service in suits against foreign corporations may be made relates to business and transactions within the jurisdiction of the state enacting the law. Otherwise, claims on contracts, wherever made, and suits for torts, wherever commit-ed, might, by virtue of such compulsory statute, be drawn to the jurisdiction of any state in which the foreign corporation might at any time be carrying on business. The manifest inconvenience and hardship arising from such extra territorial extension of jurisdiction by virtue of the power to make such compulsory appointments could not defeat the power if in law it could be rightfully exerted.

But these possible inconveniences serve to emphasize the importance of the principle laid down in Old Wayne Mut. Life Associa-

tion v. McDonough 204 U. S. page 22, that the statutory
45 consent of a foreign corporation to be sued does not extend to causes of action arising in other states."

This decision was rendered in 1915, while the Watkins case was decided in 1902, and even if we were to admit that there is a conflict between the two decisions we should be constrained to follow the Supreme Court of the United States.

The judgment is affirmed.

Endorsed: No. 869. Court of Appeals. St. Louis Southwestern R. R. Co. vs. Clarendon Boat Oar Co. Inc. Opinion & decree. Filed May 16, 1918. T. O. Browning, Dy. clerk.

Endorsed on cover: File No. 27,800. Louisiana, Second Circuit Court of Appeals. Term No. 443. Missouri Pacific Railroad Company, plaintiff in error, vs. Clarendon Boat Oar Company, Inc. Filed July 12th, 1920. File No. 27,800.

FILED
JAN 10 1922
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

OCTOBER, TERM, 1921.

No. 102.

MISSOURI PACIFIC RAILROAD COMPANY,
Plaintiff in Error,

versus

CLARENDON BOAT OAR COMPANY, Inc.,
Defendant in Error.

In Error to the Court of Appeals for the Second Circuit of the State of Louisiana.

ORIGINAL BRIEF ON BEHALF OF MISSOURI PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR.

HENRY BERNSTEIN,
ALLAN SHOLARS,
F. G. HUDSON, JR.,
Attorneys for Missouri Pacific Railroad Company, Plaintiff-in-error.

Hudson, Potts, Bernstein & Sholars
of Counsel.

MONROE, LOUISIANA, November 30th, 1921.

HARMAN PRINTING CO., "The Legal Printer," 720 Poydras St., N. O., La.

OUTLINE AND INDEX OF BRIEF.

		Page
A.	TABLE OF STATUTES, CASES & AUTHORITIES	1-4
B.	STATEMENT OF THE CASE—	
	1. The Point at Issue	5
	2. Venue and Jurisdiction	8
	3. Cause of Action	10
	4. Pleadings	11
C.	ARGUMENT—	
	First Proposition	14
	Second Proposition	17
	Third Proposition	19
	Fourth Proposition	21
	Fifth Proposition	38
	Sixth Proposition	41

IN THE

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ORIGINAL BRIEF ON BEHALF OF MISSOURI PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR.

"A"

TABLE

of

STATUTES, CASES AND AUTHORITIES.

Act 267 of 1914 (La.) Sec 23, P. 519, 531;
A. T. & S. F. R. R. v. Sowers, 213 U. S. 55;
Armbuster v. C. R. I. & P. R. R., 166 La. 155, 147 N. W. 337;
American Colonization Society v. Gartrell, 23 Va. 448;
Banco Miners v. Ross, 106 Texas 522, 172 S. W. 711;
Bank v. Earle, 18 Pet. 519, 590;
Bagdon v. Philadelphia & Reading Coal & Iron Co., 217 N. Y. 432;

Barrow Steamship Co., v. Kane, 170 U. S. 109, 18 Sup. Ct. 526, 42 L. Ed. 964;
Coy v. St. L. S. F. R. R. Co., 186 Mo. App. 408, 1 C. J. 933; 172 S. W. 446;
Cornico v. Boston Bridge Works, 205 Mass. 366;
Christilly v. Warner, 87 Conn. 461, 88 A. 711, 51 L. R. A. (N. S.) 415;
Crosley v. Southern Co., 47 La. An. 393;
Cook on Corps. (7 Ed.) Sec. 757;
Cane Co., vs. Poole, 41 S. C. 72, 19 S. E. 204, 24 L. R. A. 295;
Courtney v. Prodt, 196 U. S., 91;
Dennick v. Railroad, 103 U. S. 11, 18, 26 L. Ed. 439;
D. & R. G. R. R. v. Roller, 100 Fed. 738, 41 C. C. A. 22, 49 L. R. A. 77;
4 Digest Enc. U. S. Sup. Ct. Rep. 383-4 and
5 Digest U. S. Sup. Ct. Rep. 512, 536;
4 Enc. U. S. Sup. Ct. Rep. 352-3;
5 Enc. U. S. Sup. Ct. Rep. 518;
5 Enc. U. S. Sup. Ct. Rep. 551;
Evansville Co. v. Henderson Co., 132 Fed. 404;
Eingartner v. Steel Co., 94 Wis. 70, 68 N. W. 664, 34 L. R. A. 503, 59 Am. St. Rep. 859.
Elliot on Priv. Corp., 2 Ed. page 201;
Galveston R. R. v. Cowdrey, 11 Wall 459;
Hunter v. Wenatchee Land Co., 70 Pac. 40;
Haggin v. DeParish, L. R. 23, Q. B. D. 519;
Harris v. Lumpkin, 136 Ga., 47, 70 S. E. 869;
Hutchinson v. Ward, 192 N. Y. 375, 85 N. E. 390;
Johnson v. Trade Ins. Co., 132 Mass. 432;
Knight v. R. Co., 108 Pa., 250, 56 Am. Rep. 200;
Keene Co., v. Cunningham, 222 Fed. 821;
King v. Mullins, 171 U. S. 404, 422;
King v. Panther Lbr. Co., 171 U. S. 437;
Lhoneux v. Banking Corporation, L. R. 33 Ch., Div. 446;
L. R. 7 Q. B. 293. 296;

L. & N. R. R., v. Cook Brewing Co., 172 F., 117, 40 L. R. A. (N. S.) 798, 223 U. S. 70;
Lafayette Ins. Co., v. French, 18 How. 404;
Life Ass'n., v. Levy, 33 La. Ann. 1209;
Logan v. Bank of Scotland, 3 Ann. Cos. 1153;
Leob v. Columbia Twp., 179 U. S. 483;
Mutual Reserve Ass'n. v. Phelps, 190 U. S. 147, (23 Sup. Ct. 707, 47 L. Ed. 987;
Mutual Life Ins. Co., v. Spartley, 172 U. S. 603 (19 Sup. Ct. 308, 43 L. Ed. 569;)
Mooney v. Buford & George Mfg. Co., et al., 12 Fed. 32;
Mutual Reserve etc., Co., vs. Tadefield, 159 Fed. 833;
Minors Conflict of Laws, Par. 192;
Michigan Tr. Co., vs. Ferry, 228 U. S. 346, 353;
Miller v. Hilton, 189 Mich. 635, 155 N. W. 574;
Marsh v. Eastern R. R., 40 N. H. 575, 77 Am. Dec. 744;
McDonald v. McArthur, 154 N. E. 122, 69 S. E. 832;
Mattie v. Swepton, 127 Tenn., 693, 155 S. W. 928;
Massie v. Watts, 6 Crouch 148;
Nor. Pac. v. Babcock, 154 U. S. 190;
Notes, 70 L. R. A. 513;
Nelson v. R. Co., 88 Va. 971, 14 S. E. 838, 15 L. R. A. 583;
New York, Lake Erie & Western R. R. Co., v. Estill, 147 U. S. 591;
Old Wayne Mutual Life Ins. Co., v. McDonough, 204 U. S. 8, p. 22;
O'Neill v. Northern Colorado Irrigation Co., 242 U. S. 20, 26;
Olson v. Buffalo Mining Co., 130 F. 1017;
Peyton v. Sesmond, 129 F. 1, 63 C. C. A. 651;
Pope v. Mfg. Co., 87 N. Y. 137;
Private Corporations, Marowetz, (1st. Ed.) 523, citing *Newby v. Von Oppen & Colts Patent Firearms Mfg. Co.;*
Penna. Fire Ins. Co., v. Gold Issue Mining Co., 243 U. S. 93;

Peck Mfg. Co., v. Groves, 62 N. W. 109;
Reeves v. So. Ry., 49 S. E. 674;
Rehm v. Saving Inst. 25 N. E. 173, 125 Ind. 135;
Reno on Non-Residents, pars. 44 et seq.;
1 R. C. L. p. 328-9;
Reynolds v. Day, 79 Wash. 499, 140 Pac., 681, L. R. A. 1916 A. 432;
Runyan v. Coster, 14 Pet. 122;
R. C. L., Vol. 7, Pages 1035, 1036;
Simon v. Southern Ry. Co., 236 U. S. 131;
Smolik v. Philadelphia & Reading Coal & Iron Co., 222 Fed. Rep. 148;
St. Clair v. Cox, 106 U. S. 350, 354 1 Sup. Ct. 354, 27 L. Ed. 222;
St. L. S. W. R. R. Co., v. Clarendon Boat Oar Co., Inc., decided May 1918, La. Cir. Court Appeals by Porter, J.
Stone v. U. S. 167 U. S. A. 78;
Stephen v. I. C. R. R., 128 Ill. App. 99;
Stewart v. Litchenberg (1920) 148 La. 195, 86 So. 734;
Texas Co. v. Central Oil Co., 194 Fed. 8;
T. & P. R. R. v. Cox, 145 U. S. 593, 605;
Taylor on Private Corps., 392, cites *Johnson v. Trade Ins. Co.*, 132 Mass. 432, *Wilson v. Fire Alarm Co.*, 149 Mass. 24;
Thompson, Commentaries on Law of Corporations, Vol. 6, Par. 7990;
Tierman v. Chicago Life Ins. Co., 214 Fed. 240;
Western Union Telg. Co. v. Shaw, 77 S. W. 433;
Western Union Telg. Co. v. Clark, 38 S. W. 225;
West v. Lehmer, 115 La. 213, 38 So. 969;
Words & Phrases, Vol. 4 p. 985;
Willhite v. Skelton, 149 Fed. 72;
Watkins v. Nor. Am. L. & T. Co., 106 La. 621; 31 So. 172;
Wilson v. Fire Alarm Co., 149 Mass. 24;
Youmans v. Minn. T. Etc. Co., 67 Fed. 282.

MAY IT PLEASE THE COURT:

B. Statement of the Case.

1. The Point at Issue.

The only judgments involved in this case are those of the Louisiana Court of Appeals for the Second Circuit and the Supreme Court. The judgment of the Court of Appeals sustains an exception to the jurisdiction (R. p. 13, 14.) The judgment of the Supreme Court merely, in one word, denied the review sought. (R. p. 26.)

Various "decrees," meaning opinions, of the Court of Appeals are, by orders of that Court (R. p. 3) and under Rule 8 of this Court, made a part of the transcript.

While in a strict sense these opinions are no part of the record in that they cannot supply either the facts or evidence upon which the judgment was based, still they may properly be looked to for the purpose of defining the issue and ascertaining the question presented.

> *Courtney v. Prodt*, 196 U. S. 91,
> *Leob v. Columbia Twp.*, 179 U. S. 483,
> *Tierman v. Chicago Life Ins. Co.*, 214 Fed. 240.

The two errors assigned are (R. p. 2):

First, the action of the Court of Appeals for the Second Louisiana Circuit in sustaining an exception to the jurisdiction filed by the defendant in error to the suit instituted against it by the plaintiff in error in the District Court of Richland Parish in the Eighth Louisiana District.

Second, the refusal of the Supreme Court of Louisiana to review, upon proper and timely application of plaintiff

in error, the erroneous decision of the Court of Appeals.

These errors involve but one proposition, purely legal:

The statutes of Louisiana provide for service upon foreign corporations doing business in Louisiana by delivery of process:

(a) To the designated agent, wherever found, if one has been appointed,

(b) To any major employee in the office of such corporation if no designated agent is found, or,

(c) Alternatively, if neither employee nor agent is found, upon the Secretary of State, when so ordered by the Court.

(Sec. 26, Act 267 of 1914.)

The defendant-in-error, a New York Corporation, formerely engaged in a manufacturing business in Arkansas, had transferred its enterprise to Louisiana and had appointed an agent for service of process under a Louisiana statute (Act 243 of 1914) which authorizes such appointments and provides that service on such an agent shall constitute a valid service upon such corporation.

Plaintiff-in-error, a Missouri corporation, also doing business in both Arkansas and Louisiana, brought suit against defendant-in-error, in a Louisiana State court on a transitory cause of action arising out of a contract between them, executed and to be transacted wholly within the State of Arkansas.

The Louisiana State Court of Appeals has declined

jurisdiction on the theory that the designation of an agent for service under any State statute is restricted to actions arising within such State.

The plaintiff-in-error contends that, under the Louisiana statute, as defined and construed by the Supreme Court of Louisiana as well as under the general rule construing similar statutes, the designation of an agent for service of process is not so restricted, but contemplates general personal service, and that to hold otherwise is to deprive plaintiff of the due process and to deny it the equal protection of the law guaranteed by the Federal Constitution.

The essential legal points involved may be brought out by abstract statements:

1. Will service of process upon the designated agent of a foreign corporation doing business in the State of Louisiana vest the courts of that State with jurisdiction in a personal and transitory action arising outside of that State, brought by another foreign corporation doing business in both Louisiana and in the State where the action arose?

2. Does the designation of an agent for service of process by a foreign corporation doing business in a State where the statutes provide for service upon such corporation through the Secretary of State only upon the failure to designate an agent or to maintain representatives at its domicile, embrace causes of action arising in other States, or is the scope of such a designation limited to causes of action arising out of business and transactions within the State enacting the law?

Or, as phrased in the Court below:

Has an otherwise competent court of the State of Louisiana jurisdiction of a foreign corporation doing business in that State in a suit on a transitory cause of action arising in another State where the service is made upon an agent designated under the Louisiana statute to receive service of process?

This issue arises in the following manner and from the circumstances here stated:

II. Venue and Jurisdiction.

This case is here upon writ of error from the Court of Appeals for the Second Louisiana Circuit, which rendered a final judgment against the Missouri Pacific Railroad Company, plaintiff in error, on March 12, 1920 (R. p. 14.) A rehearing petitioned for on March 19, 1920 (R. p. 14), was denied by that Court on May 13, 1920, (R. p. 14); on June 10, 1920, (R. pp. 20-25) an application was made by this plaitiff in error to the Supreme Court of Louisiana for a review of the said decision, which application that Court denied on June 12, 1920 (R. p. 25.)

These proceedings resulted in a final denial to plaintiff in error of the relief sought, insofar as the remedies of the State courts of Louisiana were concerned—no application for a rehearing on the action of the Louisiana Supreme Court in denying the review sought being proper under the rules of that Court. (Rule XII.)

The plaintiff below, plaintiff in error here, is a Missouri railroad corporation doing business in Arkansas and

Louisiana. The defendant is a New York lumber milling corporation, formerly operating in Arkansas but now operating in Louisiana. The controversy involves the jurisdiction of the Louisiana State Courts over a transitory cause of action (*in personam*) arising in Arkansas, where service was had upon an agent designated by defendant to receive process, as is provided for foreign corporations by the statutes of Louisiana.

Federal questions were urged by both parties in the court of the first instance and in both appellate courts. The defendant in error, set up in the exception to the jurisdiction that to construe the Louisiana statute as contemplating personal actions not arising out of business transacted in Louisiana renders such statutes repugnant to the Federal Constitution as denying defendant that due process guaranteed by Article One of the Fourteenth Amendment. (R. p. 12.) The plaintiff in error presented the Federal questions urged by it in answer thereto.

Under the Louisiana Practice, no written answer or replication to the exception to the jurisdiction was proper or permissible. The District Court entered no decree and filed no opinion other than a minute entry systaining the exception (R. p. 13.)

But that this plaintiff-in-error did present and urge its constitutional rights upon both the District Court and the Court of Appeals, as well as the Louisiana Supreme Court, is affirmatively shown by the record. It is the only issue presented. The application to the Supreme Court for a Review (R. p. 4) is the first pleading wherein plaintiff-in-error could put the question into a formal pleading.

But that the Court of Appeals had the Federal question before it, considered it and passed upon it adversely to the contentions of plaintiff-in-error, is shown by the affirmative statement of Judge Porter, who was the organ of the Court of Appeals: "the question involved being a Federal one" (R. p. 16.)

The action of the Court of Appeals in declining jurisdiction of the State courts was attacked as a denial of the equal protection of the law and of due process, as is secured by the Fourteenth Amendment. (R. p. 2.)

III. Cause of Action.

The original petition filed herein in the District Court of the State of Louisiana for Richland Parish (R. pp. 7-10) stated as a cause of action a contractual indebtedness due to the Missouri Pacific Railroad Company, a Missouri corporation operating a railroad in both Arkansas and Louisiana, plaintiff in error here, by the Clarendon Boat Oar Company, a New York corporation now operating in Louisiana, defendant there and here, growing out of a rough material rate contract entered into between the parties in 1914 covering a milling operation at Clarendon, Arkansas, where defendant was then operating.

Under the terms of this contract the Railroad Company gave to the Boat Oar Company a special and lower rate on logs or timber shipped into its mill on condition that a proportionate part of the manufactured products therefrom should be shipped out over plaintiff's railroad. Such arrangements are customary and approved by the

Interstate Commerce Commission. The proof of specific tariff authority covering would be made on trial of the merits, but is not in this record because this issue arises on an exception presented and decided in *limine*. The indebtedness alleged upon grew out of an excess of inbound tonnage over proportionate outbound tonnage, upon which, by reason of the shortage in the outbound shipments, under the contract, the regular local rate should apply instead of the lower rough material rate which was applied, resulting in an undercharge of two hundred and twenty dollars and eighty-six cents ($220.86.)

IV. Pleadings.

Citation was issued upon this complaint and served upon the agent voluntarily designated by defendant for service of process under a Louisiana Statute providing for service upon foreign corporations doing business in the State, through the Secretary of State, unless they voluntarily designate a resident agent for the service of process. (Tr. P. 11; La. Act 267 of 1914.)

The Defendant Boat Oar Company excepted to the jurisdiction and citation on the ground that in a suit growing out of a contract entered into and to be performed in another State, by one foreign corporation against another foreign corporation doing business in the State of the former, service upon an agent designated under the State statute will not subject such a defendant to the jurisdiction of such court upon such a cause of action. Defendant further attacked as violating the fourteenth amendment to the Federal Constitution, the Louisiana Statute dealing

with the appointment by foreign corporations of an agent for the service of process, if such statutes should be held to relate to other than business carried on in that State. (R. p. 12.)

This exception to the jurisdiction was sustained by the District Court on January 27th, 1919 (R. p. 13) on the authority of a decision on the same point by the Court of Appeals for the Second Louisiana Circuit a short time previously in a suit by the St. Louis Southwestern R. R. Co., against this same defendant (Case No. 869, decided May 1918,) which opinion the Court of Appeals *ex proprio motu* has made a part of this transcript. (R. p. 3; R. p. 26-29.)

On appeal from this action of the District Court in sustaining the exception to the jurisdiction, the Court of Appeals approved its former ruling and affirmed the action of the District Judge. (Opinion, R. p. 15.)

In this opinion the organ of the Court of Appeals, Porter, J., confused the two cases because they involved identical points and the same defendant. He labored under the impression that the Missouri Pacific R. R., plaintiff in the second suit, was assignee of the St. Louis Southwestern Ry. Co., plaintiff in the first suit; that the cause of action in the second suit was the same as formerly presented in the first suit, and adversely determined.

On rehearing granted, this misapprehension is corrected (R. p. 19.) But the Court still maintains its original view to the effect that the Louisiana State court was without jurisdiction.

From this decree a writ of review to the Supreme Court of Louisiana was prosecuted (R. p. 20-24.) In this

writ the plaintiff attacks the action of the Court of Appeals as a denial to plaintiff of the equal protection of the laws and of due process in violation of the Fourteenth Amendment (R. p. 23.) Hence both plaintiff in error and defendant in error are here urging a denial of rights secured by the Federal Constitution.

This writ of review was denied by the Supreme Court of Louisiana by a divided bench, three to two (R. p. 25-26), without filing any opinion or decree, indicating any intention or desire to alter the prior conflicting jurisprudence upon the subject. The action of the Supreme Court was included in one word: "Denied," referring to the application for review.

This review by the Louisiana Supreme Court is altogether discretionary.

> Const. 1913, Art. 94,
> Const. 1920, Art. VII, Sec. 11,
> In re: Ingersoll, 50 La. An. 748, 23 So. 889,
> *Landry vs. Laborre*, 125 La. 714, 51 So. 697,
> *J. B. Levert Co., vs. Moore Pltg. Co.*, 135 La. 493, 65 So. 621.

Hence, we take it, that unless the subject be considered on review, a mere failure or refusal to review does not overturn prior affirmative rulings. Your Honors are doubtless familiar with the conditions frequently surrounding our State Supreme Courts and realize that, in fact, a mere failure to review is conclusive of nothing but that case. Such, certainly, is the condition and general understanding in Louisiana.

C. Argument.

FIRST PROPOSITION.

Statement of the Point.

A suit by a common carrier to collect the proper rate due under a contract of affreightment is a transitory action which may be brought in any court which has jurisdiction of the parties.

Authorities Discussed.

1 R. C. L. p. 328-9;
1 C. J. 933;
West vs. Lehmer, 115 La., 213, 38 So. 969;
Peyton vs. Sesmond, 129 F. 1, 63 C. C. A. 651;
Massie vs. Watts, 6 Crouch 148;
Nor. Pac. vs. Babcock, 154 U. S. 190;
Mattie vs. Swepton, 127 Tenn. 693, 155 S. W. 928;
Words & Phrases, Vol. 4, p. 985;
L. & N. R. R., vs. Cook Brewing Co., 172 F. 117, 40 L. R. A. (N. S.) 798, 223 U. S. 70;
Coy vs. St. L. S. F. R. Co., 186 Mo. App. 408; 172 S. W. 446;
Dennick vs. R. R., 103 U. S. 11;
D. & R. G. R. R. vs. Roller, 100 Fed. 738, 41 C. C. A. 22, 49 L. R. A. 77;
Texas Co., vs. Central Oil Co., 194 Fed. 8;
Olson vs. Buffalo Min. Co., 130 F. 1017;
Christilly vs. Warner, 87 Conn. 461, 88 A. 711, 51 L. R. A. (N. S.) 415;
Harris vs. Lumpkin, 136 Ga., 47, 70 S. E. 869;
Keene Co., vs. Cunningham, 222 Fed. 821;
Cormo vs. Boston Bridge Works, 205 Mass. 366, 91 N. E. 313;

Reynolds vs. Day, 79 Wash. 499, 140 Pac. 681, L. R. A. 1916 A. 432;

Stone vs. U. S. 167 U. S. A. 78;

Miller vs. Hilton, 189 Mich. 635, 155 N. W. 574;

Hutchinson vs. Ward, 192 N. Y. 375; 85 N. E. 390;

McDonald vs. McArthur, 154 N. E. 122, 69 S. E. 832;

Banco Minero vs. Ross, 106 Tex. 522, 172 S. W. 711;

A. T. & S. F. R. vs. Sowers, 213 U. S. 55;

Willhite vs. Skelton, 149 Fed. 72;

Marsh vs. Eastern R. R., 40 N. H. 575; 77 Am. Dec. 744.

Argument Supporting.

The general rule is that actions *ex contractu* are of a transitory nature.

1 R. C. L. p. 328-9;
1 C. J. 933;
West vs. Lehmer, 115 La., 213, 38 So. 969;
Peyton vs. Sesmond, 129 F. 1, 63 C. C. A. 651;
Massie vs. Watts, 6 Crouch 148;
Nor. Pac. vs. Babcock, 154 U. S. 190;

There is no local element or consideration connected with a suit to collect the proper rate on shipments under a contract of affreightment, as there must be in order to impair the general rule.

Mattie vs. Sweston, 127 Tenn. 693, 155 S. W. 28; Words & Phrases, Vol. 4, P. 985.

No authority is or can be cited holding such an action to be a suit of a local nature.

The rule as applied to actions growing out of contracts of affreightment with common carriers:

L. & N. R. vs. Cook Brewing Co., 172 F. 117, 40 L. R. A. (N. S.) 798, 223 U. S. 70;
Coy vs. St. L. S. F. R. Co., 186 Mo. App. 408, 172 S. W. 446.

In a transitory action a defendant may be sued wherever he may be legally served:

Denmick vs. R. R., 103 U. S. 11;
D. & R. G. R. R., vs. Roller, 100 Fed. 738, 41 C. C. A. 22, 49 L. R. A. 77;
Texas Co., vs. Central Oil Co., 194 Fed. 8;
Olson vs. Buffalo Min. Co., 130 F. 1017;
Christilly vs. Warner, 87 Conn. 461, 88 A. 711, 51 L. R. A. (N. S.) 415;
Harris vs. Lumpkin, 136 La. 47, 70 S. E. 869;
Keene Co., vs. Cunningham, 222 Fed. 821;
Cormo vs. Boston Bridge Works, 205 Mass. 366, 91 N. E. 313;
Reynolds vs. Day, 79 Wash. 499, 140 Pac. 681, L. R. A. 1916 A. 432;
Stone vs. U. S. 167 U. S. A. 78;
Millar vs. Hilton, 189 Mich. 635, 155 N. W. 574;
Hutchinson vs. Ward, 192 N. Y. 375; 85 N. E. 390;
McDonald vs. McArthur, 154 N. E. 122, 69 S. E. 832;
Banco Minero vs. Ross, 106 Tex., 522, 172 S. W. 711;
A. T. & S. F. R. vs. Sowers, 213 U. S. 55;
Willhite vs. Skelton, 149 Fed. 72;
Marsh vs. Eastern R. R., 40 N. H. 575; 77 Am. Dec. 744.

SECOND PROPOSITION.

Statement of the Point.

It was proper for the plaintiff in error, a Missouri corporation, operating a railroad in Louisiana, to invoke the jurisdiction of the courts of that State on a transitory action arising in Arkansas.

Authorities Discussed:

Cook on Corps. (7 Ed.) Sec. 757;
Bank vs. Earle, 13 Pet. 519, 590;
Runyan vs. Coster, 14 Pet. 122;
Galveston R. R. vs. Cowdrey, 11 Wall. 459.
Lafayette Ins. Co., vs. French, 18 How. 404;
Evansville Co., vs. Henderson Co., 132 Fed. 404;
Cane Co., vs. Poole, 41 S. C. 72, 19 S. E. 204, 24 L. R. A. 295;
Sec. 23, Act 267 of 1914 (La.) p. 519, 531;
Life Ass'n. vs. Levy, 33 La. An. 1209;
Crosley vs. Southern Co., 47 La An. 393;
Stephen vs. I. C. R. 128 Ill., App. 99;
Logan vs. Bank of Scotland, 3 Ann. Cos. 1153; Notes, 70 L. R. A. 513;
R. C. L., Vol. 7, pp. 1035, 1036;
Armbuster vs. C. R. I. & P. R. 166 Ia. 155; 147 N. W. 337;
T. & P. R. R. vs. Cox, 145 U. S. 593, 605;
Stewart vs. Litchenberg (1920) 148 La. 195, 86 So. 734.

Argument Supporting:

The courts of a state are open to a foreign corporation doing business therein the same as to citizens thereof.

Cook on Corps. (7th Ed.) Sec. 757;
Bank vs. Earle, 13 Pet. 519, 590;
Runyan vs. Coster, 14 Pet. 122;
Galveston R. R. vs. Cowdrey, 11 Wall. 459;
Lafayette Ins. Co., vs. French, 18 How. 404.

Such is the statutory provision in Louisiana and the State Jurisprudence.

Sec. 23 Act 267 of 1914 (La.) p. 519, 531;
Life Ass'n. vs. Levy, 33 La. An. 1209;
Crosley vs. Southern Co., 47 La., An. 393;

Aside from any status plaintiff in error might have in Louisiana, under the rule of comity the courts of a State are open, at their discretion, to entertain jurisdiction over any transitory action, when defendant can be brought in and it is within their power to do substantial justice between the parties.

Stephen vs. I. C. R., 128 Ill. App. 99;
Logan vs. Bank of Scotland, 3 Ann. Cos. 1153;
Notes, 70 L. R. A. 513;
R. C. L., Col. 7, pp. 1035, 1036;
Armbuster vs. C. R. I. & P. R. 166 Ia. 155, 147 N. W. 337;
T. & P. R. R. vs. Cox, 145 U. S. 593, 605.

This has been specifically held in Louisiana.

Stewart vs. Litchenberg, 148 La., 195, 86 So. 734.

Since the Louisiana statute places foreign corporations who comply therewith upon the same footing and status as domestic corporations, there can be no contention here based upon the plaintiff being a non-resident. If there

were, such would be a violation of the Fourteenth Amendment as a denial of the Equal Protection clause of the Fourteenth Amendment.

Cook on Corps. (7th Ed.) Sections 696-700.

THIRD PROPOSITION.

Statement of the Point:

The agent designated by defendant-in-error for service of process in Louisiana and upon whom process was served herein, was "an agent voluntarily appointed."

Authorities Discussed:

Simon vs. So. Ry. Co., 236 U. S. 131;
Watkins vs. N. Am. L. & T. Co., 106 La. 621, 31 So. 172;
Penna. Fire Ins. Co., vs. Gold Issue Min. Co., 243 U. S. 93;
Old Wayne Mutual Life Ass'n. vs. McDonough, 204 U. S. 8;
Smolik vs. Philadelphia & Reading Coal & Iron Co., 222 Fed. Rep. 148;
Bagdon vs. Philadelphia & Reading Coal & Iron Co., 217 N. Y. 432;
Michigan Trust Co., vs. Ferry, 228 U. S. 346, 353.

Argument Supporting:

The Louisiana Court of Appeals in this case has persistently failed to recognize the difference between an agent voluntarily appointed under the authority (permission) of a State statute and an agent designated by the statute.

Upon this distinction rests the issue here presented.

In the Simon case, *Simon vs. So. Ry.*, 236 U. S. 131, the Agent was a state official named by the statute.

In the Watkins case (*Watkins vs. N. Am. L. & T. Co.*, 106 La. 621, 31 So. 172,) and the Gold Issue Mining case (*Penn. Fire Ins. Co., vs. Gold Issue Min. Co.*, 243 U. S. 93), the agents were designated by the corporation under the authority or by the permission of the State's statutory provision.

The Courts in those cases clearly pointed out the distinction and held that where the agent was named by the corporation——under statutory authority, such agent is "voluntarily appointed" and service upon him is personal for all purposes as distinguished from service upon an agent named by the statute for the corporation, service upon whom is effective only as to business arising in the state in question.

This Court held this squarely in the Gold Issue case:

> "The defendant relies upon *"Old Wayne Mutual Life Association v. McDonough*, 204 U. S. 8, and *Simon v. Southern Railway Co.*, 236 U. S. 115. But the distinction between those cases and the one before us is shown at length in the judgment of the Court below, quoting a brief and pointed paragraph in *Smolik v. Philadelphia & Reading Coal & Iron Co.*, 222 Fed. Rep. 148, a statement reinforced by Cardoza J., in *Bagdon v. Philadelphia & Reading Coal & Iron Co.*, 117 N. Y. 432. In the above mentioned suits the corporations have been doing business in certain states without authority. They have not appointed the agent as required by statute, and it was held that service upon the agent whom they should have appointed was ineffective in suits upon causes of

action arising in other States. The case of service upon an agent voluntarily appointed was left untouched. 236 U. S. 129, 130. If the business out of which the action arose had been local, it was admitted that the service would have been good, and it was said that the corporation would be presumed to have assented. Of course, as stated by Learned Hand, J., in 222 Fed. Rep. 148, 151, this consent is a mere fiction, justified by holding the corporation estopped to set up its own wrong as a defense. Presumably the fiction was adopted to reconcile the linitation with the general rules concerning jurisdiction. *Lafayette Insurance Co., v. French,* 18 How. 404. *Michigan Trust Company v. Ferry,* 228 U. S. 346, 353. But when a power actually is conferred by a document, the party executing it takes the risk of the interpretation that may be put upon it by the courts. **The execution was the defendant's voluntary act.** The Eliza Lines, 199 U. S. 119, 130, 131.''

FOURTH PROPOSITION.

Statement of the Point.

Jurisdiction in a transitory cause of action arising in another state may be obtained over a foreign corporation doing business in Louisiana by means of service upon an agent voluntarily appointed there.

Authorities Discussed:

St. L. S. W. R. R. Co., vs. Clarendon Boat Oar Co., Inc., decided May 1918, La. Circuit Court Appeals, by Porter J.;

Simon vs. So. Ry. Co., 236 U. S. 131;

Old Wayne Mutual Life Ass'n. vs. McDonough, 204 U. S., p. 22;

Watkins vs. N. Am. L. & T. Co., 106 La. 621;
Mutual Reserve Ass'n. vs. Phelps, 190 U. S. 147 (23 Sup. Ct. 707, 47 L. Ed. 987;)
Mutual Life Ins. Co., vs. Spartley, 172 U. S. 603 (19 Sup. Ct. 308, 43 L. Ed. 569);
12 R. C. L. 115, Sec. 91;
Mooney vs. Buford & George Mfg. Co., et al, 12 Fed. 32;
Rehm vs. Saving Inst., 25 N. E. 173, 125 Ind. 135;
Youmans vs. Minn. T. etc., Co., 67 Fed. 282;
Mutual Reserve etc., Co., vs. Tadefield, 159 Fed. 833;
Reeves vs. So. Ry., 49 S. E. 674;
Penna. Fire Ins. Co., vs. Gold Issue Min. Co., 243 U. S. 93;
Bawknight vs. Insurance Company, 55 Ga. 194;
Edingartner vs. Steel Co., 94 Wis. 70, 68 N. W. 664, 34 L. R. A. 503, 59 Am. St. Rep. 859;
Nelson vs. R. Co., 88 Va. 971, 14 S. E. 838, 15 L. R. A. 583;
Haggin vs. De Parish, L. R. 23, Q. B. D. 519;
Lhoneux vs. Banking Corporation, L. R. 33 Ch. Div. 446;
Dennick vs. R. Co., 103 U. S. 11, 18, 26 L. Ed. 439;
St. Clair vs. Cox, 106 U. S. 350, 354, 1 Sup. Ct. 354, 27 L. Ed. 222;
Barrow Steamship Co. vs. Kane, 170 U. S. 109, 18 Sup. Ct. 526, 42 L. Ed. 964.
Knight v. R. Co., 108 Pa. 250, 56 Am. Rep. 200.
See also Reno on Non-Residents, pars. 44 *et seq.*
Minor's Conflict of Laws, Par. 192.
American Colonization Society v. Gartrell, 23 Va. 448;
Western Union Tel. Co. v. Clark, 38 S. W. 225;
Hunter v. Wenatchee Land Co., 70 Pac. 40;
Peck Mfg. Co. v. Groves, 62 N. W. 109;
Western Union Telegraph Co. v. Shaw, 77 S. W. 433;

Elliot on Private Corporations, 2 Ed., p. 201;
Taylor on Private Corporations, 392, cites *Johnson v. Trade Ins. Co.*, 132 Mass. 432, *Wilson v. Fire Alarm Co.*, 149 Mass. 24;
Private Corporations, Morawetz (1st Ed.) 523, citing *Newby v. Von Oppen & Colts Patent Firearms Mfg. Co.*, L. R. 7 Q. B. 293, 296. See also Commentaries on Law of Corporations, Thompson, Vol. 6, Par. 7990; *Pope v. Mfg. Co.*, 87 N. Y. 137.

Argument Supporting.

The essentials of jurisdiction are these:

(a) Cognizance of the class of cases to be adjudged.
(b) Proper parties properly in in Court.
(c) Decision within the issue.

Applying these as tests to the case at bar, we find:

(a) There is no doubt but that the State Courts have general jurisdiction over this class of cases. A suit upon a contract of affreightment is a transitory action and may be entertained wherever jurisdiction of the parties can be obtained. (First point *supra* page).
(b) The theory urged upon the Louisiana Circuit Court of Appeals, who so decided (St. *L. S. W. R. R. Co. vs. Clarendon Boat Oar Company, Inc.*, No. 869, decided May 1918, by Porter, J.) was that a non-resident corporation can only be cited, in *personam*, through an agent designated under a State statute, as to causes arising within that State.

The authority—almost sole authority—relied on in support of that contention was *Simon v. Southern Railway*, 236 U. S. 131, from which was quoted:

> "But this power to designate by statute, the officer upon whom service in suits against foreign corporations may be made relates to business and transactions in the jurisdiction of the State enacting the law. Otherwise, claims on contracts, wherever made, and suits for torts, wherever committed, might by virtue of such compulsory statute, be drawn to the jurisdiction of any State in which the foreign corporation might at any time be carrying on business.
>
> The manifest inconvenience and hardship arising from such extra territorial extension of jurisdiction, by virtue of the power to make such compulsory appointments, could not defeat the power if in law it could be rightfully exerted. But, these possible inconveniences serve to emphasize the importance of the principle laid down in *'Old Wayne Mutual Life Ass'n v. McDonough,'* 204 U. S., p. 22, that the statutory consent of a foreign corporation to be sued does not extend to causes of action arising in other states."

In the former Clarendon case referred to, the Louisiana Court discusses only two cases,—the Simon case, on the one side, and the case of *Watkins v. N. Am. L. & T. Co.*, 106 La. 621, on the other. They differentiate the Watkins case, but observe that, even if conflicting, it must give way to the later Simon decision by the higher tribunal.

The Court misunderstood the issue. In the Simon case, brought in the Civil District Court of the Parish of Orleans, Louisiana, against the Southern Railway, a Virginia corporation, doing business in New Orleans, on a cause of action arising outside of Louisiana, the Railroad, not having complied with the Louisiana statute relative to appointing an agent, was served, as prayed, through the Secretary of

State, who filed the papers served, but never notified the defendant.

The Supreme Court held, and properly, that the power of a State to designate by statute an officer upon whom service in suits against the foreign corporations may be made relates to business arising in that State.

In so holding, however, the Court "purposely" refrained from "passing upon" or "discussing the right to sue on a transitory cause of action and serve the same on an agent voluntarily appointed by the foreign corporation * * *" under a state statute.

Now, in the former Clarendon Boat Oar case before the Circuit Court, as here, the service was not on an agent designated by the State—but on an officer voluntarily appointpointed by the defendant, under the statute.

In regard to the Watkins case, 106 La. 621; this case was erroneously interpreted by the court below. The Watkins case was properly held not to be in conflict with the Simon case (but for an improper reason, since in the Watkins case, the agent served had been voluntarily designated.)

The Louisiana Supreme Court held squarely in the Watkins case that our State Courts had jurisdiction *in personam* over a foreign corporation doing business in Louisiana on a transitory cause of action by service on an agent voluntarily designated under our State statutes.

The Louisiana Courts of Appeals attempted to distinguish that case on the theory that the right of action arose in England, while the cause of action arose here. This distinction is not logical—nor does that Court seem sure of the

point, for it concludes by practically admitting the conflict but evades the issue by saying that if conflicting, the Watkins case is overruled by the Simon case.

That this Court in the Simon case did not decide the point here at issue is stated by that Court in that decision itself:

> (236 U. S., p. 129) " * * * We, therefore, purposely refrain from passing upon either of the propositions decided in the courts below, and without discussing the right to sue on a transitory cause of action and serve the same on an agent voluntarily appointed by the foreign corporation, we put the decision here on the special fact, relied on in the court below, that in this case the cause of action arose within the State of Alabama, and the suit therefor, in the Louisiana Court, was served on an Agent designated by a Louisiana statute. Subject to exceptions, not material here, every state has the undoubted right to provide for service of process upon any foreign corporations doing business therein, to require such companies to name agents upon whom service may be made, and also to provide that in case of the company's failure to appoint such agent, service, in proper cases, may be made upon an officer designated by law. *Mutual Reserve Ass'n. v. Phelps*, 190 U. S. 147 (23 Sup. Ct. 707, 47 L. Ed. 987); *Mutual Life Ins. Co. v. Spartley*, 172 U. S. 603, (19 Sup. Ct. 308, 43 L. Ed. 569)."

We do not see how language could more plainly express the thought.

The Gold Issue Mining case is, we submit, conclusive of the issue here presented. In that case your Honors upheld the jurisdiction of a Missouri state court in a suit arising

ex contractu in the State of Colorado against an Arizona corporation doing business in both Colorado and Missouri, where service was had upon an agent designated under authority of the Missouri statute.

As against the interpretation of the Gold Issue Mining case, the defendant herein urges:

> "That the decision is limited to the proposition that where the State Court has construed the 'designated agent' statute of that State sufficiently broad to make a non-resident corporation amenable to the jurisdiction of its state courts in actions arising in other states, then the Federal Courts will so enforce the state statute as not conflicting with the Federal Constitution."

The reply to this view is three-fold:

> "1st. A comparison of the Missouri statute construed with the Louisiana statute shows the latter as broad, if not broader, than the former.
>
> "2nd. The United States Supreme Court's decision necessarily itself determined the right under the State statute, irrespective of the attitude of the State Court, since a Federal constitutional question was presented. Since the defendant's rights under the Federal Constitution were specifically plead, the decision of the Federal Supreme Court necessarily determined that such rights were not invaded by the State statute, as construed, for State Court decisions do not and cannot preclude a determination of rights under the Federal Constitution presented to the United States Supreme Court.
>
> "3rd. In any event, the Louisiana Supreme Court has held that our Courts have jurisdiction *in*

personam over a foreign corporation doing business in Louisiana in a transitory cause of action, by service on an agent voluntarily appointed under our statutes. (*Watkins v. North American L. & T. Co.*, 106 La. 621)."

In brief and argument below counsel for defendant, finally concedes the correctness of our interpretation of the Gold Issue Mining case—but contends that the principle is not applicable here because the Louisiana statute is restricted and not so broad as the Missouri statute.

For ready reference, we compare the Louisiana and Missouri statutes:

MISSOURI	LOUISIANA
"Section 7042. Any insurance company not incorporated by or organized under the laws of this State, desiring to transact any business by any agent or agents in this State, shall first file with the superintendent of the insurance department a written instrument or power of attorney, duly signed and sealed, appointing and authorizing said superintendent to acknowledge or receive service of process issued from any court of record, justice of the peace, or other inferior court, and upon whom such process may be served for and in behalf of	"Act 267 of 1914, Sec. 26 (P. 532) The Uniform Corporation Act, and Act 179 of 1918, par. 6 (P. 336) the Uniform Service Act, both provide that service on foreign corporations shall be made: (a) On any agent, or agents, which the corporation may have designated, in accordance with existing laws, as agent, or agents, for the service of process. This service may be made wherever the agent, or agents, may be found. The "existing law" referred to is Act 243 of 1912, p. 543: "That it shall be the duty

such company * * * in any court of this State * * * * * and consenting that service of process upon said superintendent shall be taken and held to be as valid as if served upon the company, according to the laws of this or any other State. Service of process as aforesaid, issued by any such court, as aforesaid, upon the superintendent, shall be valid * * and be deemed personal service upon such company, so long as it shall have any policies or liabilities outstanding in this State. * * * Every such instrument of appointment executed by such company shall be attested by the seal of such company, and shall recite the whole of this section, and shall be accompanied by a copy of a resolution of the Board of Directors of trustees of such company similarly attested, showing that the president and secretary, or other chief officers of such company, are authorized to execute such instrument in behalf of the company; and if any such company shall fail, neglect or refuse to appoint and maintain within the State, of every foreign corporation other than foreign insurance companies doing business in this State, to file in the office of the Secretary of State a written declaration setting forth and containing the place or locality of its domicile, the place or places in the State where it is doing business, the place of its principal business establishment and the name of its agent or agents or other officer in this State upon whom service may be served, provided that no foreign corporation shall select as its agent or agents for service any person not residing in a parish where said corporation has an established business and, provided further that **service on said agent whether personal or domiciliary shall constitute a valid service on said foreign corporation.** Provided that every foreign insurance company doing business in this State shall appoint the Secretary of State its agent upon whom all legal processes shall be served and such service shall be legal and valid as against such foreign insur-

an attorney or agent in the manner hereinbefore described, it shall forfeit the right to do or continue business in this State."

ance company."

(The remaining paragaphs of Sec. 26 of the Act of 1914 regulate service on employees and on the Secretary of State).

It is thus seen that if any real distinction here material is to be drawn between the statutes, it is in favor of the scope of the Louisiana statute, which is more general in its language and comprehensive in its terms.

To repeat then, the decision of your Honors in the Gold Issue Mining Co. case, 243 U. S. 93, is not limited to the proposition that where the State Court has passed on a statute declaring that statute sufficient in terms to make a non-resident defendant amenable to the jurisdiction of the State Court in actions arising in other states, the Federal Courts will recognize and enforce the interpretation of the local statute given by the State Court, and hold such interpretation not contrary to the Federal Constitution.

If the granting of jurisdiction to a State Court over causes of action arising out of the State, by service on a non-resident defendant doing business in the State through a designated agent, deprives such non-resident of a right guaranteed by the Federal Constitution, then the fact that a State Supreme Court decided that proposition to the contrary would neither preclude nor estop the Federal Supreme Court in enforcing such non-resident defendant's Constitutional rights.

Therefore, when, in the Gold Issue Mining Company case, the Federal Supreme Court specifically holds that such

action does not deprive such non-resident corporation of a constitutional right, then the decision is authoritative and conclusive of the proposition, whether in so holding the Supreme Court is affirming a ruling of the State Supreme Court or not. The mere reading of the decision of the United States Supreme Court is conclusive on this proposition. It says that there could be no doubt of the jurisdiction of the State Court if a foreign corporation had accepted service, and that there could be equally little doubt if the foreign corporation has voluntarily appointed an agent to receive service in such cases. In so holding, your Honors specifically and by name distinguish the Simon case, which was the sole reliance of the defendant in the former litigation and here, and goes so far as to point out the ruling, not only in Missouri, where that case arose, but that similar rulings have been had as to other State laws, and finds that such rulings do not deprive defendant of any Constitutional rights, even if they take him by surprise, which is not the case here.

In the case under discussion, Justice Woodson, noting the erroneous conclusions which had been drawn from the Simon case, attaches a foreword in which he says that in order to show that such conclusions (which are the identical proposition urged by opposing counsel here), are erroneous, and, "because of the far-reaching, detrimental and injurious effect such a rule would have upon the jurisprudence of this and other states of the Union, and upon the speedy and orderly administration of justice, I feel justified in devoting more time and space to the case than would otherwise be necessary."

In discussing the Simon case, which, it will be remem-

bered, arose in Louisiana, Chief Justice Woodson, of the Missouri Supreme Court, beginning on page 1006, takes up the Louisiana Statute of 1904, under which the Simon case arose, interprets the same, discusses the law, and his opinion is simply conclusive of the proposition.

The facts of this case are materially different from the Simon case, in that the service here was on an agent voluntarily designated and the service in the Simon case was not. The facts in the instant case are even stronger than the facts in the Gold Issue Mining Company case, in that the agent for service in this case was designated by Voluntary act of the company, whereas in that case the agent was designated by the State statute, acquiesced in by the Company.

In regard to the contention that the language used by Judge Monroe in the Watkins case was obiter, it may be admitted that insofar as the decision of that case was concerned, some of the language used was obiter, but there is a striking similarity between the reasoning and conclusions reached by Justice Monroe in that case with the conclusion reached by Justice Woodson in the Missouri case, and by Justice Hughes in the Supreme Court opinion, and since there can be no possible doubt but that the opinion of Justice Hughes and of Chief Justice Woodson has disposed of any contention based on the Simon case, then counsel for the plaintiff is before the court without any authority in support of his contention, since the Simon case was the sole reliance. Certainly in that situation even the obiter of Judge Monroe is entitled to respect. When so palpably correct in legal reasoning it should be followed, and when supported by the exhaustive decision of Chief Justice Woodson and the

approval of the Supreme Court of the United States, we candidly see no way in which the Jurisdiction here sought can be escaped.

The proposition we urge is neither new nor novel:

12 R. C. L. 115, Sec. 91:

> "Process having been regularly served upon a foreign corporation, it cannot, any more than when the defendant is a non-resident natural person, defeat the action on the ground either that the plaintiff is a non-resident, or that his cause of action depends on a transaction occurring in another state or country; and this rule is equally applicable whether the action is for a tort committed, or a contract entered into, beyond the jurisdiction."

There is a long and well established line of decisions, usually involving insurance companies, of which *Mooney v. Buford & George Manufacturing Company, et al.*, 72 Fed. 32 is typical:

> "1. Foreign Insurance Companies—Service of Process—Jurisdiction.
>
> "The Indiana statute of 1883 makes it unlawful for any foreign insurance company to do business in that state until it has filed with the auditor of state a copy of a resolution of its directors consenting that, 'in any suit against the company,' process may be served on any of its agents in the state 'with like effect as if such company was chartered, organized or incorporated in the state,' and further agreeing that such service may be made 'while any liability remains outstanding against such company in the State.' Burns Rev. St. Ind. 1894, par. 4916. Held, that a foreign insurance company which has complied

with these requirements may be validly served, in the manner above prescribed, not only in suits upon obligations arising out of business done within the state, but in suits upon contracts of insurance made and payable in other states. *Rehm v. Saving Inst.*, 25 N. E. 173, 125 Ind. 135, distinguished."

Youmans v. Minn. T., Etc., 67 Fed. 282.

Mutual Reserve, etc. Co. v. Tadefield, 159 Fed. 883.

Reeves v. So. Ry., 49 S. E. 674.

"A foreign corporation doing business in this State and having agents located therein for this purpose may be sued and served in the same manner as domestic corporations upon any transitory cause of action, whether originating in this State or otherwise; and it is immaterial whether the plaintiff be a non-resident or a resident of this State, provided the enforcement of the cause of action would not be contrary to the laws and policy of this State.

"The case of *Bawknight vs. Insurance Company*, 55 Ga., 194, upon a review thereof, is overruled."

"From among the numerous cases relating to this subject, we cite the following: *Edingartner vs. Steel Co.*, 94 Wis. 70, 68 N. W. 664, 34 L. R. A. 503, 59 Am. St., Rep. 859; *Nelson vs. R. Co.*, 88 Va. 971, 14 S. E. 838, 15 L. R. A. 583; *Haggin vs. DeParish*, L. R. 23, Q. B. D. 519; *Lhoneux vs. Banking Corporation*, L. R. 33 Ch. Div. 446; *Dennick vs. R. Co.*, 103 U. S. 11, 18, 26 L. Ed. 439; *St. Clair vs. Cox*, 106 U. S. 350, 354, 1 Sup. Ct. 354, 27 L. Ed. 222; *Barrow Steamship Company vs. Kane*, 170 U. S. 109, 18 Sup. Ct. 526, 42 L. Ed. 964; *Knight vs. R. Co.*, 108 Pa. 250, 56 Am. Rep. 200. See also, Reno on Non-Residents, pars. 44 et seq. Minor's Conflict of Laws, par. 192. Of course, the right either of a non-resident or resident plaintiff to sue a foreign corpora-

tion upon a foreign cause of action is subject to this qualification:

That it would not be against the policy of the state in which the suit is brought to enforce the cause of action arising outside of its jurisdiction. The comity of states would not require the courts of this State to enforce a cause of action when to do this would be contrary to the established policy of the State. Pol. Code 1895, par. 9; *American Colonization Society vs. Gartrell*, 23 Va., 448. Subject to this qualification, foreign corporations may sue in this State on any cause of action, and may likewise be sued, provided they are found and duly served according to law. At common law service upon a corporation could be perfected only by serving its head officer, but whether service upon any other officer would be sufficient to bring the corporation into court is a matter to be determined by municipal law. The law of this State permits its own corporations to be brought into Court by serving any officer or agent transacting the business of the corporation, and the statute is broad enough to allow service upon a foreign corporation in the same way. The State of Georgia either expressly grants to these foreign corporations the right to do business within its limits, or tacitly permits them to transact business here. They are allowed to open offices in this State, and here deal with our citizens and others who may be temporarily within its limits. The State protects them in the property which they hold. The courts of Georgia are open to them for the enforcement of any claim of any character which they may have against her citizens or citizens of other states passing through this State, subject only to the qualification above referred to. Can it be said that it is a hard rule, or a violation of any sound principle, that they should be put upon the same footing as to cause of action against them as our own corporations are

placed upon by the law of the land? The case of *Bawknight vs. Insurance Company, supra,* is in direct conflict too with the modern authorities, and seems to us to be in conflict with the policy of the State as indicated by legislation which was in existence at the time the decision was rendered; and the reasons given by the learned Judge for the conclusions in that case being not at all satisfactory, especially when viewed in the light of the present day, after mature consideration and reflection we have reached the conclusion that this case should be overruled, and the law of this State, so far as this question is concerned, put upon the sound principles promulgated in the well-considered cases in other jurisdictions above referred to. The record does not disclose whether the plaintiff was a resident or non-resident of the State, but this being now immaterial, and the foreign corporation which is defendant having been found and duly served according to law, the court has jurisdiction of the cause of action stated in the petition, notwithstanding it arose in another state, there being nothing in the cause of action which would make its enforcement contrary to the policy and law of this State.

"Judgment reversed. All the Justices concur."

See also:

Western Union Tel. Co. vs. Clark, 38 S. W. 225.
Hunter vs. Wenatchee Land Co., 70 Pac. 40.
Peck Mfg. Co., vs. Groves, 62 N. W. 109.
Western Union Telegraph Co., vs. Shaw, 77 S. W. 433.

"2. The Courts of the State have jurisdiction of a cause of action in favor of a non-resident plaintiff against a corporation doing business in the State, though the proceeding is not in rem."

Elliot on Private Corporations, 2 Ed., p. 201:

> "In all the states statutory methods are now provided for the service of process upon foreign corporations which are doing business in the State. Where a corporation accedes to such provision, as to service, and accepts them as a condition upon which it may do business in the state, the court acquires complete and perfect jurisdiction over it, and may render a judgment *in personam* against it, and such a judgment is entitled to full faith and credit in other jurisdictions."

The doctrine has long been approved in Massachusetts, where it has been held that "a non-resident may sue a foreign insurance company, which does business in that State, on a contract made in another state, where the subject matter of the contract is also situated, although the only service made on the insurance commissioner whom all foreign insurance companies are required to appoint as their attorney for the service of process." Taylor on Private Corporations, 392; citing *Johnson vs. Trade Ins. Co.*, 132 Mass. 432; *Wilson vs. Fire Alarm Co.*, 149 Mass. 24.

The English courts have gone further and now hold that where a foreign corporation establishes a permanent branch agency in England it may be sued through the agent in charge of such branch in the same manner as domestic corporation, whether the agent is specially authorized to accept citation or not. And Morawetz says upon this subject: "However, if a corporation open an office or habitually transact business in a foreign state, the head officer there must be deemed an agent of the company for the purpose of receiving service of process, and,

under these circumstances service upon the officer is bindnig upon the company itself." Private Corporations, Morawetz, (1st Ed.) 523, citing *Newby vs. Von Oppen & Colts Patent Firearms Mfg. Co.*, L. R. 7 Q. B. 293, 296. See also Commentaries on Law of Corporations, Thompson, Vol. 6, Par. 7990.

The Court of Appeals of New York, sustaining the provisions of the Code of Civil Procedure to that effect, has gone still further, and holds that a citizen of that state may sue a foreign corporation upon any cause of action, no matter where originating and no matter whether the corporation has engaged in business or has appointed an agent to receive service of process in the state or not, service upon one of its officers, found within the state whether there upon his own business or otherwise being considered sufficient to bring the corporation into court, provided the service upon such officer would have been sufficient at the domicile of the corporation. *Pope vs. Mfg. Co.*, 87 N. Y., 137.

In view of the above authorities—especially the Gold Issue Mining Company, there can in our view of the law, be no doubt of the original jurisdiction of the state court.

FIFTH PROPOSITION.

Statement of the Point:

To hold that the voluntary appointment of an agent for the service of process by a foreign corporation doing business in Louisiana does not relate solely to actions arising out of business transacted in this State, does not con-

stitute a denial to that corporation of due process of law within the meaning of the Fourteenth Amendment of the Federal Constitution.

Authorities Discussed:

Penna. Fire Ins. Co., vs. Gold Issue Min. Co., 243 U. S. 93;

New York, Lake Erie & Western R. R. Co., vs. Estill, 147 U. S. 591;

O'Neill vs. Northern Colorado Irrigation Co., 242 U. S. 20, 26;

Bagdon vs. Philadelphia & Reading Coal & Iron Co., 217 N. Y. 432;

Johnson vs. Trade Insurance Co., 132 Massachusetts 432;

Watkins vs. N. Am. L. & T. Co., 106 La., 621;

Elliot, Priv. Corp. (2d Ed.) p. 201;

Argument Supporting.

This proposition was specifically maintained by this Court in the Gold Issue Mining case (243 U. S. 93.)

This was a suit in a Missouri Court upon a contract of insurance covering buildings in Colorado. The policy was issued in Colorado to an Arizona corporation by a foreign insurance company operating in Colorado, which had also obtained a license to do business in Missouri and had complied with the Missouri statute by appointing a State officer as its agent for the service of process.

> "The present suit was begun by service upon the superintendent. The insurance company set up that such service was insufficient except in suits upon Missouri contracts and that if the statute were

construed to govern the present case it encountered the Fourteenth Amendment by denying to the defendant due process of law. The Supreme Court of Missouri held that the statute applied and was consistent with the Constitution of the United States. 267 Missouri 524."

"The construction of the Missouri statute thus adopted hardly leaves a constitutional question open. The defendant had executed a power of attorney that made service on the superintendent the equivalent of personal service. If by a corporate vote it had accepted service in this specific case there would be no doubt of the jurisdiction of the State court over a transitory action of contract. If it had appointed an agent authorized in terms to receive service in such cases, there would be equally little doubt. *New York, Lake Erie & Western R. R. Co., vs. Estill,* 147 U. S. 591. It did appoint an agent in language that rationally might be held to go to that length. **The language has been held to go to that length, and the construction did not deprive the defendant of due process of law even if it took the defendant by surprise, which we have no warrant to assert."**

O'Neill vs. Northern Colorado Irrigation Co., 242 U. S. 20, 26. Other state laws have been construed in a similar way; e. g., *Bagdon vs. Philadelphia & Reading Coal & Iron Co.,* 217 N. Y. 432. *Johnston vs. Trade Insurance Co.,* 132 Massachusetts 432.

Such is also the ruling in Louisiana, in the Watkins case:

"Nor do we find anything in that law whereby the jurisdiction acquired by service of process upon an agent authorized by a foreign corporation to receive the same is limited to any particular class of cases. The present doctrine upon that subject is

thus stated by a recent writer: 'In all the states, statutory methods are now provided for the service of process upon foreign corporations which are doing business in the state. Where a corporation accedes to such provisions as to service, and accepts them as a condition upon which it may do business in the state, the court acquires complete and perfect jurisdiction over it, and may render a judgment in *personam* against it, and such a judgment is entitled to full faith and credit in other jurisdictions.'" Elliot Priv. Corp. (2d Ed.) p. 201.

SIXTH PROPOSITION.

Statement of the Point.

It is a denial to plaintiff-in-error of that due process and equal protection of the law guaranteed by the Fourteenth Amendment to the Federal Constitution, for the Court of Appeals for the Second Louisiana Circuit to refuse and for the Supreme Court of Louisiana to fail, to maintain the jurisdiction of the Louisiana courts in a transitory cause of action arising in Arkansas where process was served upon an agent for service of process voluntarily designated by a foreign corporation doing business in Louisiana.

Authorities Cited.

4 Enc. U. S. Sup. Ct. Rep. 352-3;
5 Enc. U. S. Sup. Ct. Rep. 518;
4 Digest Enc. U. S. Sup. Ct. Rep. 383-4 and
5 Digest U. S. Sup. Ct. Rep. 512, 536;
King vs. Mullins, 171 U. S. 404, 422;
Kink vs. Panther Lbr. Co., 171 U. S. 437;
5 Enc. U. S. Sup. Ct. Rep. 551.

Argument Supporting.

That corporations properly within the jurisdiction of a State come within the meaning of the Fourteenth Amendment is beyond dispute.

4 Enc. U. S. Sup. Ct. Rep. 352-3;
5 Enc. U. S. Sup. Ct. Rep. 518.

Nor is it open to question that the Fourteenth Amendment contemplates and deems as acts of the state everything done by state authorities—judicial as well as legislative or executive.

Ibid.

Therefore it follows in this case that if our contention is correct as to the issue raised, then, necessarily the contrary ruling of the Louisiana courts have denied to the plaintiff-in-error that equal protection and due process of the law secured to it by the Federal Constitution.

Equality of protection implies impartial accessibility to the established courts of justice for the protection of property as well as person and not only accessibility for the prevention and redress of wrong and enforcement of rights but, as well, an impartial operation of the settled jurisprudence and procedure.

Cases cited. 4 Digest Enc. U. S. Sup. Ct. Rep. 383-4 and 5 Dig. U. S. Sup. Ct. Rep. 512, 536;
King vs. Mullin, 171 U. S. 404, 422;
Kink vs. Panther Lbr. Co., 171 U. S. 437.

That this court is the proper tribunal to test the de-

cisions of the State courts by the guarantees of the Federal Constitution is equally well settled.

5 Enc. U. S. Sup. Ct. Rep. 551.

We, therefore, respectfully pray that your Honors may grant the relief sought hereby; reverse the judgment of the Honorable Court of Appeals for the Second Circuit of the State of Louisiana; direct your mandate to the several Judges thereof, directing and commanding that they enter a judgment overruling the exception to the jurisdiction filed in the cause entitled, "*Missouri Pacific Railroad Company, Plaintiff and Appellant vs. Clarendon Boat Oar Company, Defendant and Appellee*, No. 887 on the docket of the said Court; and that the said Court of Appeals for the Second Louisiana Circuit be directed and instructed that the said jurisdiction be maintained and the said cause remanded for trial and hearing in accordance with the petition filed therein.

Respectfully submitted,

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MONROE, LA., November 30, 1921.